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TITLE 14

LOCAL GOVERNMENT

(CHAPTERS 1-53 IN VOLUME 9; CHAPTERS 54-103 IN VOLUME 10; CHAPTERS 104-182 IN VOLUME 11A; CHAPTERS 296-387 IN VOLUME 12)

SUBTITLE 11. ECONOMIC DEVELOPMENT IMPROVEMENT DISTRICTS, FACILITIES, AND AUTHORITIES

CHAPTER 184

CENTRAL BUSINESS IMPROVEMENT DISTRICTS

Subchapter 1 — General Provisions

14-184-103. Legislative determinations.

(a) It is determined and declared by the General Assembly that:

(1) The deterioration of the central business districts of urban centers of the state by reason of obsolescence, overcrowding, faulty arrangement or design, deleterious land use, or a combination of these or other factors is a threat to the property tax and other revenue sources of municipalities;

(2) Increases in population and automobile usage have created conditions of traffic congestion in central business districts, and such conditions constitute a hazard to the safety of pedestrians and impede the use of public rights-of-way;

(3) The elimination of urban blight and decay and the modernization and general improvement of central business districts by governmental

action are considered necessary to promote the public health, safety, and welfare of the communities; and

(4) The restoration of central business districts is the appropriate subject for remedial legislation.

(b) It is further determined and declared by the General Assembly that:

(1) Municipalities should be encouraged to create self-financing improvement districts and designated district management corporations to execute self-help programs to enhance local business climates; and

(2) Municipalities should be given the broadest possible discretion in establishing self-help programs consistent with local needs, goals, and objectives.

History. Acts 1973, No. 162, § 2; A.S.A. 1947, § 20-1601n; Acts 2007, No. 517, § 1.

Amendments. The 2007 amendment inserted the (a) designation and added (b).

14-184-111. Board of commissioners.

(a)(1)(A) In the ordinance creating a central business improvement district, the governing body shall appoint a minimum of five (5) persons who shall be owners of real property in the district or officers or stockholders of a corporation owning real property within the district as commissioners who shall compose a board of commissioners for the district.

(B) In cities operating under a commission form of government, the mayor and city commissioners, by virtue of their offices, may be commissioners of each district and may compose the board of each district.

(2)(A) At the initial meeting of commissioners, the governing body of the municipality shall divide randomly the commissioners into three (3) groups roughly equal in number.

(B)(i) The first group of commissioners shall serve a term of two (2) years.

(ii) The second group of commissioners shall serve a term of four (4) years.

(iii) The third group of commissioners shall serve a term of six (6) years.

(C) Following the initial group of commissioners, all commissioners shall serve a term of six (6) years.

(3) The board of commissioners shall elect a chair and a secretary.

(b)(1)(A)(i) All vacancies that may occur after the board shall have been organized shall be filled by the governing body.

(ii) The vacating member shall serve, if possible, until a successor is appointed by the governing body of the municipality.

(B) If all places on the board shall become vacant or those appointed shall refuse or neglect to act or shall cease to have the qualifications required for their original appointment, new members shall be appointed by the governing body as in the first instance.

(2)(A)(i) The governing body shall have the power to remove the board or any member of it by a two-thirds (2/3) vote of the whole number of the members of the governing body.

(ii) Removal shall be for cause only and after a hearing upon sworn charges preferred in writing by a property owner in the district. Ten (10) days' notice of the hearing on the charges shall be given.

(B) The governing body shall have the power to remove the board or any member of it by a vote of the majority of the whole number of the members elected to the governing body upon the written petition of the owners of a majority in assessed value of the property located within the district after a hearing upon ten (10) days' notice to each member of the board affected.

(c) The members of the board shall receive no compensation for their services but may be reimbursed for their actual expenses incurred in the performance of their duties.

History. Acts 1973, No. 162, §§ 8, 11; A.S.A. 1947, §§ 20-1607, 20-1610; Acts 2007, No. 517, § 2.

Amendments. The 2007 amendment substituted "a minimum of five (5)" for "five (5)" in (a)(1)(A); substituted "may" for "shall" twice in (a)(1)(B); added (a)(2); redesignated former (a)(2) as present (a)(3); redesignated former (b)(1)(A) as present (b)(1)(A)(i); and added (b)(1)(A)(ii).

14-184-115. Powers of improvement district generally.

A central business improvement district shall have all powers necessary or desirable to undertake and carry out any or all parts of the planned improvement including, but not limited to, the following:

(1) Existence as a body corporate, having the power to sue and to be sued and to contract in its name;

(2) To own, acquire, improve, operate, maintain, sell, lease as lessor or lessee, and contract concerning, or otherwise deal in or dispose of, any and all real and personal property necessary or desirable for the accomplishment of the plan;

(3)(A) To acquire, construct, install, operate, maintain, and contract regarding pedestrian or shopping malls, plazas, sidewalks or moving sidewalks, parks, parking lots, parking garages, offices, urban residential facilities including, without limitation, apartments, condominiums, hotels, motels, convention halls, rooms, and related facilities, and buildings and structures to contain any of these facilities, bus stop shelters, decorative lighting, benches or other seating furniture, sculptures, telephone booths, traffic signs, fire hydrants, kiosks, trash receptacles, marquees, awnings or canopies, walls and barriers, paintings or murals, alleys, shelters, display cases, fountains, child-care facilities, restrooms, information booths, aquariums or aviaries, tunnels and ramps, and pedestrian and vehicular overpasses and underpasses;

(B) To acquire airspace for and to construct pedestrian walkways through buildings; and

(C) To construct each and every other useful, necessary, or desired facility or improvement that may secure and develop industry and be conducive to improved economic activity within the district.

(4) To landscape and plant trees, bushes and shrubbery, grass, flowers, and each and every other kind of decorative planting;

(5) To install and operate or to lease public music and news facilities;

(6) To acquire and operate buses, minibuses, mobile benches, and other modes of transportation;

(7) To construct and operate child care facilities;

(8) To acquire air rights for and to construct, operate, and maintain pedestrian overpasses, vehicular overpasses, public restaurants or other facilities within the air rights, to establish, operate, and maintain other restaurants or public eating facilities within the district, and to lease space within the district for sidewalk cafe tables and chairs;

(9) To construct lakes, dams, and waterways of whatever size;

(10) To employ and provide special police facilities and personnel for the protection and enjoyment of the property owners and the general public using the facilities of the district;

(11) To employ such persons as are necessary to procure such equipment as may be required to maintain the streets, alleys, malls, bridges, ramps, tunnels, lawns, trees, and decorative planting of each and every nature, and every structure or object of any nature whatsoever constructed or operated by the district;

(12) To grant permits for newsstands, sidewalk cafes, and every other useful and desired private usage of public or private property;

(13) To prohibit or restrict vehicular traffic on the streets within the district as the governing body may deem necessary and to provide the means for access by emergency vehicles to or in these areas;

(14) To acquire, construct, reconstruct, extend, maintain, operate, repair, or lease to others for public use parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install these facilities in public and private areas, whether these areas are owned in fee simple, by easement, or by leasehold, with the approval and authority of the governing body, and, where desirable, to exchange property in kind by negotiations with private owners in the acquisition of property and property rights for the public purposes contemplated by this subchapter;

(15)(A) To remove, by agreement or by the power of eminent domain, any existing structures or signs of any description in the district not conforming to the plan of improvement; and

(B) To require, whether by agreement or by the exercise of eminent domain, any or all utilities servicing the district to lay such pipe, extend such wires, provide such facilities, or conform, modify, or remove existing facilities to effectuate the plan of improvement for the district;

(16) To provide services for the improvement and operation of the district including, without limitation:

(A) Promotion and marketing;
(B) Advertising;
(C) Health and sanitation;
(D) Public safety;
(E) Security;
(F) Traffic and parking improvements;
(G) Recreation;
(H) Cultural enhancement;
(I) Consultation regarding planning, management, and development activities;
(J) Maintenance of improvements;
(K) Activities in support of business or residential recruitment, retention, or management development;
(L) Aesthetic improvements, including the decoration, restoration, or renovation of any public place or building facade and exterior in public view that confers a public benefit;
(M) Furnishing music in any public place;
(N) Special event and festival management;
(O) Professional management, planning, and promotion of the district;
(P) Stabilization, maintenance, rehabilitation, and adaptive reuse of historic buildings; and
(Q) Design assistance; and

(17) To do everything necessary or desirable to effectuate the plan of improvement for the district.

History. Acts 1973, No. 162, § 14; 1975, No. 402, § 5; A.S.A. 1947, § 20-1613; Acts 2007, No. 517, § 3.

Amendments. The 2007 amendment added (16) and redesignated former (16) as present (17), and made a related change.

CHAPTER 186

HARBORS AND PORT FACILITIES GENERALLY

SUBCHAPTER.
2. Municipal Port Authorities.

Subchapter 2 — Municipal Port Authorities

SECTION.
14-186-203. Creation of authority — Members.

Effective Dates. Acts 2011, No. 833, § 2: Mar. 30, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the need for greater citizen input into the operations of a municipal port authority is essential to the public health, safety, and welfare; that this expansion of the authority would allow cities to have great citizen input; and that this act is

immediately necessary because all cities should be able to expand this authority as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-186-203. Creation of authority — Members.

(a)(1) The municipal port authority shall be created by ordinance of the governing body of the city or town and shall be an instrumentality of the city or town creating the authority.

(2)(A) Any city or incorporated town in the State of Arkansas shall have the right, by ordinance, to create and set up a port authority.

(B) The authority shall consist of and be governed by a board of not less than five (5) members and not more than seven (7) members, one (1) of whom may be the mayor of the city or incorporated town creating the authority.

(i) If the mayor is a member of the port authority, the mayor shall be chair.

(ii) If the mayor is not a member of the port authority, the chair shall be elected by the members of the authority.

(b)(1) The members shall be appointed by the mayor of the city or town creating the authority and shall be qualified electors residing in the city or town or within the county in which the city or town is located.

(2)(A)(i) The members of the board shall be appointed for a period of one (1) year, two (2) years, three (3) years, four (4) years, and five (5) years, respectively.

(ii) If the authority consists of more than five (5) members, the new members shall initially be appointed for staggered terms so that in no year will more than two (2) members be appointed to a full five-year term.

(B)(i) Upon the termination of office of each member, his or her successor shall be appointed for a term of five (5) years and shall serve until his or her successor has been appointed and qualified.

(ii) In the event of a vacancy, however caused, the successor shall be appointed by the mayor for the unexpired term.

(3)(A) The board shall elect one (1) of their number as vice chair and shall elect a secretary and a treasurer who need not necessarily be members of the board.

(B) The authority shall require a surety bond of the treasurer appointee in such amount as the authority may fix, and the premiums on it shall be paid by the authority as a necessary expense of the authority.

(4) The board shall meet upon the call of its chair. A majority of all of its members shall constitute a quorum for the transaction of business.

(5) The members of the authority shall receive such compensation for their services as shall be determined and prescribed by the ordinance setting up and creating the authority.

History. Acts 1947, No. 167, §§ 1, 2, 9; 1979, No. 910, § 1; 1983, No. 622, § 1; A.S.A. 1947, §§ 19-2720, 19-2721, 19-2728; Acts 1991, No. 735, § 1; 2011, No. 833, § 1.

Amendments. The 2011 amendment substituted "not less than five (5) members and not more than seven (7) members" for "five (5) members" in (a)(2)(B); deleted "so that the term of one (1) member shall expire each year after the creation of the municipal port authority" at the end of present (b)(2)(A)(i); inserted (b)(2)(A)(ii); inserted "or her" in (b)(2)(B)(i); and made minor stylistic changes.

SUBTITLE 12. PUBLIC UTILITIES GENERALLY

CHAPTER 199

GENERAL PROVISIONS

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2007, No. 1609, § 2: Apr. 10, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that as a result of changes in wholesale electric markets municipal electric utilities are being forced to substantially increase rates; that the increases in the electric rates being charged by municipal electric utilities are in many instances creating hardships for customers; and that this act is necessary because it will allow municipalities to use municipal electric utility revenues to provide relief from rate increases to customers who need relief in order to avoid irreparable harm to those customers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-199-101. Surplus revenues.

(a) As used in this section, unless the context otherwise requires:

(1) "Surplus revenues" means revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation of the utilities and all requirements pertaining to the payment of principal, interest, and fees in connection with bonds and

establishing and maintaining reserves of ordinances or indentures securing bonds issued to finance the cost of constructing, reconstructing, extending, improving, or equipping the utilities have been fully met and complied with;

(2) "Utilities" means the utility or utilities involved in the pledging and use of surplus utility revenues pursuant to this section for the payment of the principal of, interest on, and paying agent's fees in connection with any bonds issued by the municipality.

(b) Any municipality in this state is authorized to pledge and use surplus revenues derived from one (1) or more of the water, sewer, gas, or electric utilities already owned at the time of any such pledge or use by the municipality for any of the following purposes only:

(1) Off-street parking facilities;

(2) Sanitation facilities;

(3) Hospital buildings and facilities;

(4) Public park buildings, improvements, and facilities;

(5) Auditoriums;

(6) Convention centers;

(7) Streets and roadways;

(8) Airport improvements and facilities;

(9) City halls and municipal administration buildings;

(10) Public ports, harbors, and industrial or other facilities related thereto, whether owned by the municipality or another public body;

(11) Fire and emergency equipment;

(12) Assistance for low-income customers under subsection (d) of this section; or

(13) Any combination of the above purposes.

(c) The authority conferred by this section pertains to the pledging and use of surplus utility revenues to bonds issued by municipalities for the purposes set forth in subsection (b) of this section only, which purposes are not related to the operation of utilities. Nothing in this section shall be construed as modifying or diminishing the authority, the existence of which is confirmed and ratified, of the direct pledging and cross pledging of all or any part of the revenues of each utility to utility revenue bonds issued for constructing, reconstructing, extending, improving, or equipping that and other utilities already owned by the municipality at the time of any such pledge, cross pledge, or use, as is presently done in the case of many municipalities in the state.

(d)(1)(A) The governing authority of a municipal electric utility may use surplus revenues from the operation of the municipal electric utility to provide assistance to low-income customers of the utility.

(B) Not more than four percent (4%) of surplus revenues may be used by the governing authority of a municipal electric utility to provide assistance to low-income customers of the utility.

(2) Assistance to low-income customers of the municipal electric utility may include without limitation:

(A) Home energy efficiency improvements;

(B) Bill payment assistance; or

(C) Other assistance approved by the governing authority of a municipal electric utility.

(3) If the governing authority of a municipal electric utility uses surplus revenues to provide assistance to low-income customers of the utility, the governing authority of a municipal electric utility shall establish guidelines for the application of assistance, including without limitation, qualifications for assistance and the manner in which assistance is sought.

History. Acts 1967, No. 305, §§ 1, 2; 1979, No. 37, § 1; 1979, No. 519, § 1; A.S.A. 1947, §§ 19-3931, 19-3932; Acts 1989, No. 108, § 1; 1993, No. 195, § 1; 2007, No. 1609, § 1.

Amendments. The 2007 amendment in (b) inserted present (12) and redesignated former (12) as present (13); added (d); and made related changes.

CHAPTER 200

MUNICIPAL AUTHORITY OVER UTILITIES

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-200-101. Jurisdiction over utilities — Appeal.

(a) As used in this section, "public utility" means any electric, gas, sewer, or telephone company, and any company providing similar services, except a company excluded from the definition of "public utility" under § 23-1-101(9)(B)(ii), a consolidated utility district under § 14-217-101 et seq., and a water or light commission under § 14-201-101 et seq.

(b)(1) Acting by ordinance or resolution of its council, board of directors, or commission, every city and town shall have jurisdiction to:

(A)(i) Except as provided in § 23-4-201, determine the terms and conditions upon which the public utility may be permitted to occupy

the streets, highways, or other public places within the municipality, including without limitation:

(a) The rates, quality, and character of each kind of product or service to be furnished or rendered by a public utility; and

(b) A reasonable franchise fee.

(ii) The ordinance or resolution shall be deemed prima facie reasonable.

(iii) A franchise fee for a utility, including a telephone company providing services other than basic local exchange service, shall not exceed the higher of the amount in effect on January 1, 1997, or four and one-quarter percent (4.25%), unless agreed to by the affected utility or approved by the voters of the municipality;

(B) Require a telephone company providing basic local exchange service to pay a reasonable franchise fee not to exceed the higher of the amount of the telephone company's franchise fee on January 1, 1997, or a fee equal to four and one-quarter percent (4.25%) of the revenues received by the telephone company from providing basic local exchange services, unless:

(i) A higher rate or franchise fee is approved by the voters of the municipality; or

(ii) The telephone company agrees to pay a higher percentage on services offered in addition to basic local exchange services;

(C) Require of any public utility such additions and extensions to its physical plant within the municipality as shall be reasonable and necessary in the interest of the public and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed; and

(D) Provide a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this chapter.

(2) Nothing in this section shall limit the authority of the public utility to collect from its customers residing in each municipality an amount that equals the franchise fee assessed by the municipality on the public utility.

(3) If franchise fees assessed for basic local exchange services are based on revenues, the revenues shall consist of revenues from basic local service, excluding, among other things, extension, terminal equipment, toll, access, yellow pages, and other miscellaneous equipment revenues.

(4)(A) No cause of action that challenges the right of a municipality to assess a franchise fee against a public utility for permission to occupy the streets, highways, or other public places within the municipality shall result in the award of money damages.

(B) However, consistent with the provisions of Arkansas Constitution, Article 16, § 13, any cause of action for illegal exaction found to be meritorious may result in the granting of injunctive relief.

(c)(1) Any public utility affected by any such ordinance or resolution or any other party authorized to complain to the Arkansas Public

Service Commission under § 23-3-119 may appeal the action of the council or commission by filing within twenty (20) days of receipt of notice of the ordinance or resolution by the utility's registered agent for service of process of the final action a written complaint with the commission setting out how the ordinance or resolution is unjust, unreasonable, or unlawful, whereupon the commission shall proceed with an investigation, hearing, or determination of the matters complained of, with the same procedure that it would dispose of any other complaint made to it, and with like effect.

(2) Such appeal shall not suspend the enforcement of any provisions of the ordinance or resolution unless the commission, after a hearing and upon notice and for good cause shown, orders the suspension conditioned upon the filing of a bond with the commission as provided for in § 23-4-408.

(3) Nothing in this section shall be construed to in any way limit or restrict the jurisdiction or the powers of the commission as in other sections granted.

(4) In the event the municipal boundaries of a city or town are altered or amended by annexation or otherwise, the city or town shall notify the utility's registered agent for service of process of the alteration or amendment, and the utility shall not be liable for any additional franchise fees for the right to furnish utility service or occupy the streets, highways, or public places in newly added or annexed areas unless the notice shall have been given.

(d) In all matters of which by this act the commission and cities and towns are each given original jurisdiction, such jurisdiction shall be concurrent. Cities and towns shall take no action with respect to any matter under investigation by the commission until the matter has finally been disposed of by the commission. The commission shall take no action with respect to any matter which is the subject of an ordinance or resolution pending before the council or commission of any city or town until the matter has finally been disposed of.

(e) Nothing in this act shall deprive or be construed as depriving any municipality of the benefits or rights accrued or accruing to it under any franchise or contract to which it may be a party, and neither the commission nor any court exercising jurisdiction under this act shall deprive the municipality of any such benefit or right.

(f)(1) No city or town may impose additional franchise fees upon any provider of regulated broadband services under the Broadband Over Power Lines Enabling Act, § 23-18-801 et seq.

(2) A city or town may impose franchise fees upon any provider of nonregulated broadband services under the Broadband Over Power Lines Enabling Act, § 23-18-801 et seq., at the same rates that the city or town charges other providers of broadband network services.

History. Acts 1935, No. 324, § 15; Pope's Dig., § 2078; A.S.A. 1947, § 73-208; Acts 1993, No. 403, § 7; 1994 (1st Ex. Sess.), No. 6, §§ 3, 6; 1994 (1st Ex. Sess.), No. 7, §§ 3, 6; 1997, No. 182, § 1; 1999, No. 576, § 1; 2007, No. 477, § 1; 2007, No.

739, § 2; 2009, No. 163, § 4.

Amendments. The 2007 amendment by No. 477 rewrote (a).

The 2007 amendment by No. 739 added (e).

The 2009 amendment substituted "4.25%" for "4¼%" in (b)(1)(A)(iii) and (b)(1)(B).

14-200-107. Election to authorize purchase by municipality.

Any municipality may determine to acquire the property of a public utility as authorized under the provisions of this act by the vote of the municipal council or city commission, taken after a public hearing, of which at least thirty (30) days' notice has been given, and ratified and confirmed by a majority of the electors voting thereon at any general or special municipal election held in accordance with § 7-11-201 et seq.

History. Acts 1935, No. 324, § 48; Pope's Dig., § 2111; A.S.A. 1947, § 73-246; Acts 2005, No. 2145, § 49; 2007, No. 1049, § 70; 2009, No. 1480, § 89.

Amendments. The 2007 amendment rewrote the section.

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)."

CHAPTER 201

MUNICIPAL BOARDS AND COMMISSIONS

SUBCHAPTER.

Subchapter 1 — Cities of the First Class Generally

SECTION.

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-201-105. Creation of commission — Members.

(a)(1) Any city of the first class in which it is desired to establish such a utility commission, by a majority vote of the city council, shall enact an ordinance creating a commission to be composed of five (5) citizens who are qualified electors of the county and not less than thirty-five (35) years of age.

(2) The ordinance, resolution, or other action creating a commission shall specifically state that the commission is created pursuant to this subchapter.

(b) The commissioners shall be appointed by the mayor and confirmed by a two-thirds (⅔) vote of the city council.

(c)(1) No member of the commission shall hold any elective office under the municipal, county, state, or federal government while a member of the commission.

(2) No member of the commission shall be an officer, director, or employee of any private utility company.

(d) There shall be five (5) positions on the commission. The person appointed to position number one (1) shall serve for a term of two (2) years. The person appointed to position number two (2) shall serve for a term of four (4) years. The person appointed to position number three (3) shall serve for a term of six (6) years. The person appointed to position number four (4) shall serve for a term of eight (8) years. The person appointed to position number five (5) shall serve for a term of ten (10) years. Successor members shall be appointed for a term of ten (10) years.

(e) All vacancies occurring in the membership of the commission due to death, resignation, or other causes shall be filled by the mayor appointing a person to fill the unexpired term of the membership so vacated, subject to the approval of two-thirds (⅔) of the city council.

(f) Successors to members of the commission whose terms have expired or who fill the unexpired portion of a term shall be appointed by the mayor, subject to the approval of two-thirds (⅔) of the city council.

History. Acts 1957, No. 115, §§ 1, 2, 5; 1961, No. 108, § 1; 1985, No. 889, § 1; A.S.A. 1947, §§ 19-4061, 19-4062, 19-4065; Acts 1989, No. 275, § 1; 2003, No. 1464, § 1.

14-201-109. Abolition of commission.

(a)(1) When such a utility commission has been established pursuant to this subchapter by the city council or other governing body, it cannot be abolished except by a majority vote of the electorate of the city at a special election called for the purpose.

(2) No abolishment of any such commission, whether pursuant to the provisions of this subchapter or otherwise, shall affect the rights, properties, or obligations held or incurred by the commission.

(b)(1) If twenty-five percent (25%) of the electors of the city petition the city council to do so, a special election shall be ordered in accordance with § 7-11-201 et seq. not later than fourteen (14) days from the date

on which the petition was filed to be held at least ninety (90) days after the order on the question whether the utility commission shall be abolished or continued.

(2) A majority vote of the electorate shall determine the question.

History. Acts 1957, No. 115, §§ 3, 4; 1985, No. 889, § 2; A.S.A. 1947, §§ 19-4063, 19-4064; Acts 2005, No. 2145, § 50; 2007, No. 1049, § 71; 2009, No. 1480, § 90.

Amendments. The 2007 amendment substituted "at a special election called for the purpose" for "at either a special election called for the purpose or at a general election" in (a)(1); and rewrote (b).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b)(1).

CHAPTER 202

JOINT MUNICIPAL ELECTRIC POWER GENERATION

Effective Dates. Acts 2001, No. 988, § 5: Mar. 21, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the public relies upon reasonably priced supplies of electricity and that the ability of municipalities to invest in and construct electric utility generating facilities and ensure the lowest practicable electric rates for their residents is unreasonably reduced by restriction of project partners to regulated utilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-202-102. Definitions.

As used in this chapter:

(1) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this chapter;

(2) "Clerk" means city clerk, city recorder, town recorder, or other similar office hereafter created or established;

(3) "Costs" or "project costs" means, but shall not be limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project, including the costs of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, and franchises, and the preparation of applications for and securing the same;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs;

(E) Working capital;

(F) Initial and reload fuel costs;

(G) All machinery and equipment, including construction equipment;

(H) All costs related to upgrades on a transmission system owned by a person or an entity that are required for the delivery of power and energy from the project to the municipality;

(I) Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality;

(J) Establishment of reserves; and

(K) All other expenditures of the issuing municipality incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project and the placing of the project in operation;

(4) "Electric system" means any system for the generation, transmission, or distribution of electric power or energy;

(5) "Energy service provider" means a qualifying facility, a power broker, a power marketer, any entity other than an electric utility or a municipal electric utility, or an aggregator other than a municipality or county or group of municipalities or counties that sells or otherwise provides electricity to or for itself or a retail electric customer, regardless of whether the entity sells other electric services and regardless of whether the entity takes title to the electricity;

(6) "Governing body" means the council, board of directors, commission, or other governing body of a municipality;

(7) "Interest" or "interest in a project" means any ownership interest in a project, including, without limitation, an undivided interest as a tenant in common, an undivided leasehold interest, or an interest consisting of rights to receive an agreed-upon portion of the power and energy output of a project;

(8) "Major utility facility" means any electric generating plant and related necessary and appurtenant land rights, substation, fuel, fuel handling, processing and storage equipment, water supply facilities, and similar necessary equipment and property, whether real, personal, or mixed;

(9) "Municipality" means any city of the first class or city of the second class incorporated under the laws of this state, or any commission or agency thereof, including any municipally owned or controlled corporation or any improvement district, consolidated public or municipal utility system improvement district, or nonprofit corporation lessee

of such entity which owns or operates an electric system, and any authority created under the Arkansas Municipal Electric Utility Interlocal Cooperation Act of 2003, § 25-20-401 et seq.;

(10) "Person" means any natural person, firm, corporation, electric cooperative corporation, energy service provider, nonprofit corporation, association, or improvement district;

(11) "Power requirements of the municipality" means the maximum hourly electric consumption by the municipality's retail customers;

(12) "Project" means any major utility facility owned, in whole or in part, by one (1) or more public utilities, persons, or municipalities, whether the major utility facility is located entirely or partly within, or wholly without, the state;

(13) "Public utility" means any person or entity engaged in the generation and sale of electric power and energy which was subject to regulation by the Arkansas Public Service Commission as to such generation and sale prior to the enactment of § 23-19-101 et seq. [repealed]; and

(14) "State" means the State of Arkansas.

History. Acts 1979, No. 5, § 2; A.S.A. 1947, § 19-5602; Acts 2001, No. 988, § 1; 2003, No. 366, § 3; 2007, No. 236, § 1; 2009, No. 163, § 5.

Amendments. The 2009 amendment rewrote (5).

14-202-103. Authorization to construct and operate project.

(a)(1) A municipality is authorized and empowered to acquire, construct, reconstruct, enlarge, equip, operate, and maintain an interest in a project, jointly with one (1) or more municipalities, persons, or public utilities, and is authorized and empowered to enter into agreements for the joint or cooperative ownership, financing, construction, or operation and maintenance of any project, and to enter into agreements for the exchange of, and to exchange with, other municipalities, persons, or public utilities an interest in one (1) or more portions of a project for an interest in one (1) or more other portions of the project.

(2) In particular, but without limiting the generality of subdivision (a)(1) of this section, any municipality may participate in the financing of any project owned or to be owned by the other party or parties to the agreement, in exchange for the ownership of a portion thereof, for the use of the project or for an agreed upon portion of the power and energy output thereof.

(3) Any agreement may provide for the creation of a joint board or committee for administration of the undertaking covered by the agreement or for the delegation of authority to administer an undertaking to one (1) or more parties to the agreement and may contain such other terms and conditions as the parties consider appropriate.

(b) Prior to exercising any such authority or power, the governing body of the municipality shall determine the needs of the municipality for power and energy for the present and a reasonable period in the future as shall be determined by the governing body of the municipality.

In determining the desirability of a proposed project, there shall be taken into account the following:

(1) The economies, efficiencies, and revenues estimated to be achieved in acquiring, constructing, and operating the proposed project;

(2) The municipality's estimated requirements for power and energy from the project and for reserve capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or is anticipated to become a party;

(3) The cost of existing or alternative power supply sources; and

(4) The marketability of electric power in excess of the power requirements of the municipality.

(c) Any municipality is authorized to make, or cause to be made, and pay for engineering and other studies as it may deem necessary or desirable.

(d) A municipality shall not undertake the acquisition, construction, enlarging, or equipping of an interest in the project which will result in the municipality's owning electric power capacity that shall exceed two hundred fifty percent (250%) of the power requirements of the municipality.

History. Acts 1979, No. 5, § 3; A.S.A. 1947, § 19-5603; Acts 2001, No. 988, § 2; 2003, No. 366, §§ 5, 6.

14-202-104. Contracts to acquire interest in project.

(a) The acquisition of an interest in a project may include the purchase or lease by mutual voluntary agreement with another person or municipality of an existing project or an interest therein or the participation in the planning, engineering, and legal aspects of preparing for the construction of and securing necessary state, local, or federal permits for the construction of a proposed project or a project on which construction begun but not been completed.

(b) Any contract entered into by a municipality with respect to an interest in, and operation of, a project shall be authorized by ordinance of the governing body of the municipality and shall contain such terms, conditions, and provisions as the governing body of the municipality shall determine to be necessary or desirable. Any contract may include, but shall not be limited to, the following:

(1) The purpose or purposes of the contract;

(2) The duration of the contract;

(3) The manner of appointing or employing the personnel necessary in connection with the project;

(4) The method of financing the project, including the apportionment of costs and revenues;

(5) Provisions specifying the ownership interests of the parties in real property, or portions thereof, used or useful in connection with the project and the procedures for the disposition of such property when the contract expires, is terminated, or when the project, for any reason, is abandoned, decommissioned, or dismantled;

(6) Provisions relating to alienation and partition of a municipality's undivided interest in a project;

(7) Provisions permitting or requiring the exchange by the municipality with other municipalities, persons, or public utilities of an interest in one (1) or more portions of a project for an interest in one (1) or more other portions of the project and specifying the procedure therefor;

(8) Appropriate provisions pertaining to the details of accomplishing the acquisition, including provisions that authorize a person, including one (1) of the parties to the contract, a public utility, or a third party, to construct the project as agent for all the parties;

(9) Provisions for the operation and maintenance of a project, including provisions that authorize a person, including one (1) of the parties to the contract, a public utility, or a third party, to operate and maintain the project as agent for all the parties;

(10) Provisions that if one (1) or more of the parties shall default in the performance or discharge of its or their obligations with respect to the project, one (1) or more of the other parties shall assume, pro rata, or otherwise, the obligations of such defaulting party or parties and succeed to such rights and interests of the defaulting parties in the project as may be agreed upon in the contract;

(11) Methods of amending the contract;

(12) Methods for terminating the contract; and

(13) Any other necessary or proper matter.

(c) It shall not be necessary for the municipality to publish any such contract if the ordinance authorizing the contract is published as required by law governing the publication of ordinances of a municipality, the ordinance advises that a copy of the contract is on file in the office of the clerk of the municipality for inspection by any interested person, and the copy of the contract is filed with the clerk of the municipality.

History. Acts 1979, No. 5, § 4; A.S.A. 1947, § 19-5604; Acts 2001, No. 988, § 3; 2007, No. 236, § 2.

Amendments. The 2007 amendment, in (b)(8), substituted "including provisions that authorize a person, including" for "whereby", deleted "including" after "contract", and substituted "or a third party" for "may"; in (b)(9), substituted "including provisions that" for "which may", inserted "a person, including", and substituted "a public utility, or a third party" for "including a private person"; in (b)(10), substituted "shall" for "may" and deleted "may" before "succeed."

14-202-105. Sale of excess capacity.

Capacity or output derived by a municipality from a project not then required by the municipality may be sold or exchanged by the municipality, for such consideration, for such period, and upon such other terms and conditions as may be determined by the parties to any other municipality, improvement district, federal or state political subdivision or agency, or other person, which other municipality, improvement district, federal or state political subdivision or agency, or other person

owns an electric system or electric system facilities whether operated by it, or by a person under a franchise, lease, or other agreement.

History. Acts 1979, No. 5, § 5; A.S.A. 1947, § 19-5605; Acts 2007, No. 236, § 3.

Amendments. The 2007 amendment deleted the (a) designation and deleted (b) relating to interest on bonds.

14-202-112. Bonds, coupons — Execution and seal.

(a)(1)(A) Bonds issued hereunder shall be executed by the manual or facsimile signatures of the mayor and clerk of the municipality.

(B) Any coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(b) The seal of the municipality shall be placed or printed on each bond in such manner as the governing body of the municipality shall determine.

History. Acts 1979, No. 5, § 8; 1981, No. 425, § 45; A.S.A. 1947, § 19-5608; Acts 1993, No. 543, § 1; 1993, No. 611, § 1; 2007, No. 236, § 4.

Amendments. The 2007 amendment substituted "Any" for "The" at the beginning of (a)(1)(B).

CHAPTER 206

ACQUISITION OF UTILITIES BY MUNICIPALITIES

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-206-103. Confirmation by electors.

(a) Any municipality may determine to seek approval from the commission to acquire the property of a gas or electric public utility as authorized under the provisions of this chapter by the vote of the municipal council, city commission, or governing body taken after a public hearing, of which at least thirty (30) days' notice has been given by publication in newspapers having a general circulation within the municipality. This vote shall have been ratified and confirmed by a majority of the electors voting thereon at any special election held in accordance with § 7-11-201 et seq.

(b)(1) In the event the vote of the municipal council, city commission, or governing body is ratified and confirmed by a majority of the electors voting thereon, the clerk of the municipality shall notify the commission of the results of the election within ninety (90) days thereafter.

(2) Within one (1) year after the election, the municipality may file with the commission an application for approval of a certificate for the acquisition or purchase of the property of a gas or electric public utility as provided in this chapter.

History. Acts 1987, No. 110, § 2; 2005, No. 2145, § 51; 2007, No. 1049, § 72; 2009, No. 1480, § 91.

Amendments. The 2007 amendment rewrote (a).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in the last sentence of (a).

14-206-105. Proof of service and notice — Filing fee.

(a)(1) Each application shall be accompanied by proof of service of a copy of the application on the gas or electric public utility which owns the property and on the director or other administrative head of the following state agencies or departments:

(A) The Arkansas Department of Environmental Quality;

(B) The Arkansas Economic Development Commission;

(C) The Department of Finance and Administration;

(D) The Arkansas Energy Office;

(E) The Attorney General;

(F) Any school district or other political subdivision of this state that is the recipient of real and personal property taxes in which any of the gas or electric utility properties to be acquired by the municipality may be located; and

(G) Any other state agency or department or political subdivision of this state designated by Arkansas Public Service Commission regulation or order.

(2) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed and a notice that interventions or limited appearances must be filed with the commission within thirty (30) days after the date of filing, unless good cause is shown.

(b)(1) Each application shall also be accompanied by proof that public notice thereof was given to persons residing in the municipality by the publication of a summary of the application, and a statement of the date on which it is to be filed, and a statement that interventions or limited appearances must be filed with the commission within thirty (30) days after the filing date set forth in the notice, unless good cause is shown, in a newspaper or newspapers having substantial circulation in the municipality.

(2) For purposes of this subsection, any economic impact statement submitted as an exhibit to the application need not be summarized. However, the published notice shall include a statement that the impact statements are on file at the office of the commission and available for public inspection.

(3) The municipality shall also cause copies of the economic impact statement to be available for public inspection. The published notice shall contain a statement of the location and the times the impact statements will be available for public inspection.

(4) In addition, the commission may, after filing, require the applicant to serve notice of the application or copies of it, or both, upon such other persons, and file proof thereof, as the commission may deem appropriate.

(c) Where any personal service or notice is required in this section and § 14-206-104, service may be made by any officer authorized by law to serve process by personal delivery or by certified mail.

(d) An initial filing fee of five hundred dollars ($500) shall accompany each application.

History. Acts 1987, No. 110, § 3; 1997, No. 540, § 63; 1999, No. 1164, § 125.

CHAPTER 207

VALUATION OF PROPERTIES AND FACILITIES UPON ANNEXATION

SECTION.

Effective Dates. Acts 2001, No. 988, § 5: Mar. 21, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the public relies upon reasonably priced supplies of electricity and that the ability of municipalities to invest in and construct electric utility generating facilities and ensure the lowest practicable electric rates for their residents is unreasonably reduced by restriction of project partners to regulated utilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Gov-

ernor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-207-103. Right to acquire properties, facilities, and customers.

CASE NOTES

Construction with Other Laws.

A municipal utility could take facilities, customers, and property in an area annexed by a city, notwithstanding that § 23-18-302(8) stood for the general proposition that an electric cooperative could not be ousted from its assigned area, as this section specifically allowed a municipal utility to condemn the facilities, distribution properties, and customers of an electric cooperative. Craighead Elec. Coop. Corp. v. City Water & Light Plant, 278 F.3d 859 (8th Cir. 2002).

14-207-104. Procedures and valuation formula.

(a) In the event that an agreement pursuant to § 14-207-103(a) or (b) cannot be reached within such six-month period, the municipality shall pay to the electric public utility an amount equal to the following:

(1) The present-day reproduction cost, new, of the properties and facilities being acquired, less depreciation computed on a straight-line basis; plus

(2) The book value, net of depreciation, of all properties and facilities not being acquired or portions thereof, which were constructed or purchased in good faith by the electric public utility in order to serve customers in the annexed area, less the book value, net of depreciation, of the properties and facilities, to the extent that at the time that title to the properties or facilities being taken pursuant to this act is transferred, the properties and facilities not being acquired:

(A) Are required for serving customers of the electric public utility not in the annexed area; and

(B) May be reasonably expected to serve customers not in the annexed area within eight (8) years following the acquisition; plus

(3) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the electric public utility outside the annexed area after detaching the portion to be sold; plus

(4) In the event that the electric public utility system does not provide wholesale power service to the municipality acquiring its properties, facilities, and customers under this subchapter, then, in addition to the amounts required by subdivisions (a)(1) and (3) of this section, the municipality shall pay the electric public utility either:

(A) Three hundred fifty-five percent (355%) of gross revenues less gross receipts taxes received by the electric public utility for the twelve-month period preceding notification from customers in the annexed area; or

(B) The amount required by subdivision (a)(4)(A) of this section payable over five (5) years with interest at the then-prevailing AAA insured tax-exempt municipal bond interest rate.

(b) In the event that the electric public utility system ceases to provide wholesale power service to the municipality prior to five (5) years after the acquisition of the properties, facilities, and customers of the electric power utility under this subchapter, then the municipality will pay, pro rata for the remainder of such five-year period, in accordance with subdivision (a)(4)(A) of this section.

History. Acts 1991, No. 745, § 3; 2001, No. 988, § 4.

14-207-106. Exercise of power of eminent domain.

CASE NOTES

Cited: Craighead Elec. Coop. Corp. v. City Water & Light Plant, 278 F.3d 859 (8th Cir. 2002).

CHAPTER 208

VALUATION OF RURAL WATER SERVICE PROPERTIES AND FACILITIES UPON ANNEXATION

14-208-101. Definitions.

As used in this chapter:

(1) "Municipality" means both Arkansas municipal corporations and consolidated municipal water improvement districts; and

(2) "Rural water service" means any entity under Arkansas law that is not owned by a municipality and is a water association, water improvement district, or water authority.

History. Acts 2009, No. 779, § 1.

14-208-102. Right to acquire rural water service properties, facilities, and customers.

(a)(1) Unless otherwise agreed between a municipality that owns or operates a water service and a rural water service, the inclusion by annexation of any part of the assigned service area of a rural water service within the boundaries of any Arkansas municipality shall not in any respect impair or affect the rights of the rural water service to continue operations and extend water service throughout any part of its

assigned service area unless a municipality that owns or operates a water service elects to purchase from the rural water service all customers, distribution properties, and facilities located within the municipality reasonably utilized or reasonably necessary to serve customers of the rural water service within the annexed areas under this chapter, excluding water sources, treatment plants, and storage serving customers outside the annexed areas.

(2)(A) Unless otherwise agreed between a municipality that owns or operates a water service and a rural water service, a municipality may not undertake or begin construction, operation, or extension of any equipment or facilities for the supplying of water service to the annexed areas without complying with this chapter.

(B) The affected rural water service is entitled to injunctive relief for any violation of this chapter.

(b)(1) The municipality shall give written notice to the rural water service prior to the municipality's acquiring from the rural water service all customers, distribution properties, and facilities reasonably utilized or reasonably necessary to serve customers of the rural water service within the annexed areas.

(2) The municipality and the rural water service shall meet and negotiate in good faith the terms of the acquisition, including, as an alternative, granting the rural water service an agreement to serve the annexed area or portions of the annexed area.

(3)(A) Before an acquisition under this chapter by the municipality occurs, the municipality shall receive approval from the Arkansas Natural Resources Commission that the action complies with the Arkansas Water Plan under § 15-22-503.

(B) The commission shall:

(i) Approve the application under the Arkansas Water Plan if it determines the requirements of § 15-22-223(b)(2)(B) are satisfied, including costs derived from negotiation or appraisal;

(ii) Issue a letter to the municipality that the proposed action is exempt from review under the Arkansas Water Plan; or

(iii) Deny the application under the Arkansas Water Plan if it determines the requirements of § 15-22-223(b)(2)(B) are not satisfied.

(c) An agreement reached under this chapter shall comply with § 15-22-223.

(d) This chapter shall not limit applicable federal law, including without limitation 7 U.S.C. § 1926(b).

(e) If a municipality that owns or operates a water service has an area within its corporate limits that is served by another municipality's water service, the municipality may elect to purchase from the other municipality's water service all customers, distribution properties, and facilities located within the municipality using the procedures under this subchapter.

History. Acts 2009, No. 779, § 1; 2011, No. 778, § 3; 2011, No. 1053, § 1.

Amendments. The 2011 amendment by No. 778 inserted "occurs" in (b)(3)(A).

The 2011 amendment by No. 1053 added (e).

14-208-103. Procedures and valuation formula.

(a)(1)(A) If an agreement under § 14-208-102 cannot be reached, the municipality and the rural water service shall each select one (1) qualified appraiser, and the two (2) appraisers selected shall then select a third appraiser for the purpose of conducting appraisals to determine the value of customers, distribution properties, and facilities of the rural water service annexed by the municipality.

(B) The value of customers, distribution properties, and facilities of the rural water service annexed by the municipality shall be determined by using the factors set out in § 15-22-223(b)(2)(B).

(2) The agreement or decision of at least two (2) of the three (3) appraisers is the value.

(3) If either the municipality or the rural water service is dissatisfied with the decision of the appraisers, either may institute an action in circuit court to challenge the reasonableness of the value determined by the appraisers.

(b) The compensation required by this section shall be paid:

(1) To the rural water service at a time not later than one hundred twenty (120) days following the date upon which the value is certified;

(2) At a later date as mutually agreed upon by the parties; or

(3) As determined by the circuit court.

History. Acts 2009, No. 779, § 1.

14-208-104. Valuation data.

(a) The rural water service shall provide to the municipality all data and information required to establish valuations under this chapter.

(b) Upon execution of an agreement reached under this chapter, the municipality shall reimburse the rural water service for reasonable costs of appraisal and incidental expenses associated with establishing valuation.

History. Acts 2009, No. 779, § 1.

SUBTITLE 13. PUBLIC UTILITY IMPROVEMENT DISTRICTS

CHAPTER 217

GENERAL CONSOLIDATED PUBLIC UTILITY SYSTEM IMPROVEMENT DISTRICTS

SECTION.

Effective Dates. Acts 2007, No. 45, § 2: Jan. 31, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that consolidated utility districts are empowered to participate in the development, ownership, and operation of electric generation facilities, that current Arkansas law is unclear regarding the authority of districts to participate in projects located outside the state of Arkansas, and that the authority should be confirmed and clarified to allow districts to immediately proceed with out-of-state projects. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-217-103. Definitions.

Whenever used in this chapter, unless the context otherwise requires:

(1) "Consolidated utility district" or "district" means any municipal improvement district created before March 19, 1975, pursuant to special act or general act, or created after March 19, 1975, pursuant to this chapter, for the purpose of constructing or operating and maintaining a consolidated utility system;

(2) "Consolidated utility system", or "consolidated system", or "system" means any system of public utilities together with any facilities related to or necessary or appropriate to the construction, operation, or maintenance consisting of:

(A) A combined water system and sewer system; or

(B) An electric system consolidated or combined with a water system or with a sewer system;

(3) "Electric system" means any system for the production, generation, transmission, or delivery of electricity;

(4) "Water system" means any system for the acquisition, treatment, storage, transmission, or delivery of water;

(5) "Sewer system" means any system for the collection, transmission, treatment, or disposal of liquid or solid industrial or domestic waste;

(6) "Major utility facility" or "major facility" means any electric generating plant or bulk water supply facility and related necessary appurtenant land and land rights, substation, fuel, fuel handling and storage equipment, and similar necessary equipment;

(7) "Construct" or "construction" means to acquire, construct, reconstruct, extend, improve, install, or equip any system or portion thereof;

(8) "Municipality" means any city of the first class, city of the second class, or incorporated town;

(9) "Governing body" means the council, board of directors, commission, or other governing body of a municipality;

(10) "City clerk" means city clerk, city recorder, town recorder, or other similar office hereafter created or established;

(11) "Public utility corporation" means any public utility as defined in § 23-1-101;

(12) "Person" means any natural person, firm, corporation, association, public agency located within or outside the State of Arkansas, or other legally recognized entity;

(13) "Bonds" means bonds issued under the authority of this chapter, whether assessment secured bonds or revenue bonds;

(14) "Assessment secured bonds" means bonds described in and issued under the authority of § 14-217-109(b);

(15) "Revenue bonds" means bonds described in and under the authority of § 14-217-109(c);

(16) "Board of commissioners" or "board" means the board of commissioners, board of directors, board of improvement, or other governing board of a district; and

(17) "Commissioner" means any member of a board of commissioners.

History. Acts 1975, No. 490, § 3; A.S.A. 1947, § 20-1903; Acts 2007, No. 45, § 1; 2009, No. 163, § 6.

Amendments. The 2007 amendment added "public agency located within or outside the State of Arkansas, or other legally recognized entity" at the end of (12); and added "and" at the end of (16).

The 2009 amendment substituted "§ 14-217-109(b)" for "§ 14-217-109(c)" in (14), and substituted "§ 14-217-109(c)" for "§ 14-217-109(b)" in (15).

SUBTITLE 14. SOLID WASTE DISPOSAL, WATERWORKS, AND SEWERS GENERALLY

CHAPTER 229

GENERAL PROVISIONS

RESEARCH REFERENCES

ALR. Validity of local regulation of hazardous waste. 67 A.L.R.4th 822.

14-229-101. Individual Sewage Disposal Systems Advisory Committee — Creation — Members.

(a) There is established an advisory committee to be known as the "Individual Sewage Disposal Systems Advisory Committee", for the purpose of making recommendations, advising, and providing assistance to the Program Administrator of the Environmental Program Section of the Division of Environmental Health Protection of the Department of Health concerning the utilization and application of alternate and experimental individual sewage disposal systems.

(b) The advisory committee shall consist of fourteen (14) members, to be appointed as follows:

(1) A member of the Arkansas Home Builders Association, to be appointed by the president of the association;

(2) A member of the Arkansas Real Estate Commission, to be appointed by a majority vote of the commission;

(3) A member of the Arkansas Realtors Association, to be appointed by the president of the association;

(4)(A) One (1) member who shall be a currently serving or former member of the board of a suburban improvement district or an officer or member of an association of property owners created by and pursuant to state law and organized for the purpose of maintaining common facilities, including sewage disposal facilities, in unincorporated subdivisions in this state, to be named by the Governor.

(B) However, in making the appointment, the Governor shall name a person who has been a developer or a member or officer of the board of a development company that has developed large unincorporated subdivisions in two (2) or more counties in this state;

(5) One (1) member who is a registered septic tank installer, to be appointed by the Governor;

(6) One (1) member who is a certified designated representative, to be appointed by the Governor;

(7) Two (2) members who are interested in individual sewage disposal systems research from the University of Arkansas, to be named by the President of the University of Arkansas;

(8) Three (3) members involved with the individual sewage disposal systems program of the Department of Health, to be appointed by the Director of the Department of Health;

(9) The Director of the Arkansas Department of Environmental Quality or a designee;

(10) The State Conservationist of the United States Department of Agriculture Natural Resources Conservation Service or a designee; and

(11) The State Geologist with the Arkansas Geological Survey or a designee.

(c)(1) The eight (8) members of the advisory committee appointed to serve thereon in the manner set forth in subdivisions (b)(1) – (7) of this section shall be appointed for terms of four (4) years.

(2) A vacancy in the term of any member due to death, resignation, or other cause shall be filled in the manner provided in this section for the original appointment for the unexpired portion of the term.

(d) Members of the advisory committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e)(1)(A) The advisory committee shall elect from its membership a chair, a vice chair, and a secretary-treasurer, who shall each serve a term of one (1) year.

(B) Officers shall be eligible for election to succeed themselves.

(2) The advisory committee shall establish its own rules of procedure.

(3) The advisory committee shall meet upon call by the chair, at the request of any five (5) members of the committee stated in writing, at the request of the Director of the Division of Environmental Health Protection of the Department of Health, or upon call by the Director of the Department of Health.

History. Acts 1983, No. 708, § 1; A.S.A. 1947, § 19-5415; Acts 1991, No. 185, § 1; 1993, No. 129, § 1; 1993, No. 145, § 1; 1997, No. 250, § 89; 1999, No. 1164, § 126; 2007, No. 189, §§ 1, 2.

Amendments. The 2007 amendment, in (b), substituted "fourteen (14)" for "twelve (12)" in the introductory paragraph, inserted (b)(5) and (b)(6), deleted former (b)(7) and (b)(8) and redesignated the remaining subdivisions accordingly, rewrote presesnt (b)(7) and (b)(8), and substituted "Natural Resources Conservation Service" for "Soil Conservation Service" in (b)(10); and in (c)(1), substituted "eight" for "six (6)" and "(b)(1) – (7)" for "(b)(1) through (b)(5)."

14-229-102. Individual Sewage Disposal Systems Advisory Committee — Powers and duties.

The Individual Sewage Disposal Systems Advisory Committee shall have the following powers and duties:

(1) To advise with and make recommendations to the Director of the Department of Health and the Director of the Division of Environmental Health Protection of the Department of Health, concerning the utilization and application of alternate and experimental individual sewage disposal systems;

(2) To advise with and assist the Division of Environmental Health Protection of the Department of Health in efforts to promote the experimentation, development, and improvement of individual sewage disposal systems;

(3) To advise with and assist the division in the development and implementation of:

(A) Training and educational programs for employees of the division to acquaint the employees with technological advances in the development of experimental and alternate systems for individual sewage disposal systems;

(B) Opportunities for employees of the division to participate in seminars and other training programs designed for their technological advancement, including the promulgation of guidelines and regulations for reimbursement of expenses for employees who engage in the training opportunities;

(C) The acquisition of laboratory testing equipment necessary for the conducting of experiments and testing of experimental and alternate individual sewage disposal systems;

(D) The acquisition of necessary field supplies and equipment to enable the division to engage in necessary field activities to assist property owners in the installation, operation, and repair of experimental and alternate individual sewage disposal systems, and to enable the department to offer technical advice, when requested by property owners, with respect to the operation or repair of the equipment;

(E) To provide, if funds are available, technical assistance, materials, and equipment required for the modification or repair of experimental and alternate individual sewage disposal systems, which have been installed by property owners under permits issued by the department, of equipment approved by the department as being adequate to meet state individual sewage disposal systems standards; and

(F) To cooperate with and offer assistance to other public agencies, private developers, and home owners in the development, installation, operation, repair, modification, and improvement of experimental and alternate individual sewage disposal systems for the purpose of developing the necessary technological advancements required to meet the standards prescribed by the division for the installation and operation of individual sewage disposal systems deemed adequate to function, in accordance with the standards in the particular area in which the systems are to be installed;

(4)(A) If a firm, person, or corporation violates any provision of § 14-236-101 et seq. or the rules or orders promulgated or issued by the State Board of Health or violates any condition of a license, permit, certificate, or any other type of registration, the committee may assess a civil penalty and suspend or revoke the license, permit certificate, or other type of registration of the firm, person, or corporation.

(B) A civil penalty assessed under subdivision (4)(A) of this section shall not exceed one thousand dollars ($1,000) for each violation.

(C) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(D) All fines collected under this section shall be deposited into the State Treasury and credited to the Public Health Fund to be used to

defray the costs of administering the individual sewage disposal systems program.

(E) Subject to rules that may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds relative to fines collected under this section, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year;

(5)(A) An applicant or interested party seeking review of a final agency decision regarding a permit under § 14-236-101 et seq. or the rules adopted by the State Board of Health under § 14-236-101 et seq. shall file a written appeal for a hearing before the committee within thirty (30) days after the receipt of the agency decision.

(B) An appeal to the committee shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(6)(A) After a hearing held under subdivision (4) or subdivision (5) of this section, a person who considers himself or herself injured in his or her person, business, or property by a final committee action is entitled to a review of the action by the State Board of Health.

(B) A person shall institute a proceeding for review under subdivision (6)(A) of this section by filing a petition with the Department of Health within thirty (30) days after service upon the person of the committee's final decision.

History. Acts 1983, No. 708, § 2; A.S.A. 1947, § 19-5416; Acts 2007, No. 189, § 3; 2011, No. 822, § 1.

Amendments. The 2007 amendment substituted "Division of Environmental Health Protection of the Department of Health" for "Division of Sanitarian Services" throughout the section; and added (4).

The 2011 amendment added (5) and (6).

14-229-103. Termination of water service.

(a) A municipality owning or operating a public sewer system or sewer improvement district that provides sewer service to its citizens may request a water association, a water improvement district, or a water authority that provides the water service to terminate the water service to a resident who is delinquent at least thirty (30) days in making payment to the municipality for sewer service or solid waste service.

(b) The water association, water improvement district, or water authority shall send notice to a person who is delinquent in making payments for sewer service or solid waste service of the date the water service will be terminated and shall terminate the water service upon that date unless the balance due the municipality for sewer service or solid waste service is paid.

(c) The water association, water improvement district, or water authority shall terminate the water service upon certification by the municipality that the person:

(1) Is more than thirty (30) days delinquent in making payments for sewer service or solid waste service; and

(2) Has been sent notice of the termination of the water service as required under subsection (b) of this section.

(d) As used in this section, "water authority" means the public body politic and governmental entity organized under the Water Authority Act, § 4-35-101 et seq.

History. Acts 1995, No. 717, § 1; 2009, No. 195, § 1.

Amendments. The 2009 amendment inserted "or water authority" or similar language in (a), (b), and (c); inserted "or solid waste service" in (a), (b), and (c)(1); redesignated (c) and substituted "as required under subsection (b) of this section" for "by the municipality" in (c)(2); added (d); and made related and stylistic changes.

14-229-104. Rural water and wastewater entities — Electronic funds transfers.

All rural water and rural wastewater entities, however organized, may disburse funds for payment of debts by electronic funds transfer if:

(1) The person responsible for the disbursement maintains a ledger including without limitation the following information:

(A) The name and address of the entity receiving payment;

(B) The routing number of the bank in which the funds are held;

(C) The account number and the accounts clearinghouse trace number pertaining to the transfer; and

(D) The date and amount transferred; and

(2) Written consent for payment by electronic funds transfer is given by the entity to whom the transfer is made.

History. Acts 2009, No. 642, § 2.

CHAPTER 233

JOINT COUNTY AND MUNICIPAL SOLID WASTE DISPOSAL

SECTION.
14-233-122. Purchasing procedures.

Effective Dates. Acts 2001, No. 611, § 2: Mar. 7, 2001. Emergency clause provided: "It is found and determined by the General Assembly that county industrial development corporations should recommend an additional director of joint solid waste disposal authorities in order to give the authorities greater awareness of the impact solid waste issues have upon economic development of the area; that this act so provides; and that until this act becomes effective the flexibility and effectiveness of the authorities will be hampered. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 599, § 9: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that that there is an urgent need to provide additional safe and sanitary solid waste and wastewater collection, treatment, and disposal facilities; that the best method of financing such facilities is by the issuance of revenue bonds; and that this act is immediately necessary to facilitate the prompt and efficient provision of safe and sanitary solid waste and wastewater collection, treatment, and disposal facilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-233-102. Definitions.

As used in this chapter:

(1) "Board of directors" or "board" means the board of directors of a sanitation authority created under this chapter;

(2) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this chapter;

(3) "Clerk" means the county clerk of a county and the city clerk, city recorder, town recorder of a municipality, or other similar office of a county or municipality hereafter created or established;

(4) "Costs" or "project costs" means, but is not limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating to them;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, and franchises, and the preparation of applications for and securing them;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs;

(E) Working capital;

(F) All machinery and equipment, including construction equipment;

(G) Interest on the bonds during the period of construction and for such a reasonable period thereafter as may be determined by the issuing sanitation authority;

(H) Establishment of reserves; and

(I) All other expenditures of the issuing sanitation authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project and the placing of it in operation;

(5) "County" means any county in this state;

(6) "District" means an entity established pursuant to § 14-114-101 et seq., § 14-115-101 et seq., § 14-116-101 et seq., § 14-117-101 et seq., § 14-118-101 et seq., § 14-119-101 et seq., § 14-120-101 et seq., § 14-121-101 et seq., § 14-122-101 et seq., § 14-123-201 et seq., § 14-124-101 et seq., § 14-125-101 et seq., § 14-184-101 et seq., § 14-185-101 et seq., § 14-186-101 et seq., § 14-187-101 et seq., § 14-188-101 et seq., § 14-249-101 et seq., § 14-250-101 et seq., and § 14-251-101 et seq.;

(7) "Governing body" means the quorum court of a county and the council, board of directors, commission, or other governing body of a municipality or district;

(8) "Member" means a municipality, county, or district that participates jointly through a sanitation authority with other municipalities or counties in projects under this chapter;

(9) "Municipality" means a city of the first class, city of the second class, or an incorporated town;

(10) "Person" means any natural person, firm, corporation, nonprofit corporation, association, or improvement district;

(11)(A) "Project" means any real property, personal property, or mixed property of any kind that can be used or will be useful in:

(i) Controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste, including without limitation, property that can be used or that will be useful in extracting, converting to steam, including the acquisition, handling, storage, and utilization of coal, lignite, or other fuel of any kind, or water that can be used or will be useful in converting solid waste to steam, and distributing the steam to users thereof, or otherwise separating and preparing solid waste for reuse, or that can be used or will be useful in generating electric energy by the use of solid waste as a source of generating power and distributing the electric energy to purchasers or users thereof in accordance with the general laws of the state; or

(ii) Collecting, pumping, disposing of, treating, or otherwise dealing in wastewater, sludge, or treated effluent.

(B) For purposes of this chapter, not more than twenty-five percent (25%) of the fuel used to produce steam or generate electricity from any project shall consist of materials other than solid waste;

(12) "Sanitation authority" or "authority" means a public body and body corporate and politic organized in accordance with the provisions of this chapter;

(13) "Solid waste" means any:

(A) Garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and

(B) Other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities; and

(14) "State" means the State of Arkansas.

History. Acts 1979, No. 699, § 2; 1985, No. 678, § 1; A.S.A. 1947, § 82-2732; Acts 2005, No. 689, § 1; 2007, No. 599, § 1.

Amendments. The 2007 amendment, in (6), substituted "§ 14-123-201 et seq." for "§ 14-123-101 et seq." and deleted "§ 14-183-101 et seq." following "§ 14-125-101 et seq."; added the (11)(A) and (11)(B) designations; and added (11)(A)(ii) and made related changes.

14-233-104. Creation of authority — General powers and restrictions.

(a)(1) Any two (2) or more municipalities or suburban improvement districts, any two (2) or more counties, or any one (1) or more municipalities or suburban improvement districts together with any one (1) or more counties are authorized to create and become members of a sanitation authority as prescribed in this chapter.

(2) Any city of the first class, city of the second class, or incorporated town may create a sanitation authority under this chapter, and the sanitation authority shall have the same powers as other sanitation authorities vested under this chapter.

(3) Any district may become a member of a sanitation authority if approved for membership unanimously by the other members.

(b)(1) Each authority may be empowered to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of a project.

(2) Unless limited by the members of the authority in the manner provided in this chapter, any project may be located at any place that in the judgment of the board of directors of the authority best serves the needs of the member governments, whether within or without the boundaries of the member governments.

(c) All projects accomplished by sanitation authorities pursuant to the provisions of this chapter shall be subject to all applicable federal and state requirements for the disposal, treatment, or other handling of solid waste.

History. Acts 1979, No. 699, § 3; A.S.A. 1947, § 82-2733; Acts 1991, No. 962, § 1; 2005, No. 689, § 2; 2005, No. 927, § 2.

14-233-105. Contents of ordinance — Filing of application — Certificate of incorporation — Amendments.

(a)(1) The governing body of each municipality and county desiring to create and become a member of a sanitation authority may determine by ordinance that it is in the best interest of the municipality or county in accomplishing the purposes of this chapter to create and become a member of an authority.

(2) The governing body of each district desiring to become a member of a sanitation authority may determine by resolution that it is in the best interest of the district to become a member of an authority.

(b) The ordinance or resolution shall:

(1) Set forth the names of the municipalities, counties, or districts which are proposed to be members of the authority;

(2) Specify the powers to be granted to the authority and any limitations on the exercise of the powers granted, including limitations on the authority's area of operations, the use of projects by the authority, and the authority's power to issue bonds;

(3) Specify the number of directors of the authority and the voting rights of each director;

(4) Approve an application to be filed with the Secretary of State, setting forth:

(A) The names of all proposed members;

(B) Copies of all ordinances or resolutions certified by the respective clerks or secretaries;

(C) The powers granted to the authority and any limitations on the exercise of the powers granted;

(D) The number of directors of the authority and the voting rights of each director;

(E) The desire that an authority be created as a public body and a body corporate and politic under this chapter; and

(F) The name which is proposed for the authority.

(c)(1) The application shall be:

(A) Signed by the mayor of each municipality, county judge of each county, and presiding officer of each district;

(B) Attested by the respective clerks and secretaries; and

(C) Subscribed and sworn to before an officer or officers authorized by the laws of this state to administer and certify oaths.

(2)(A) The Secretary of State shall examine the application.

(B) If he or she finds that the name proposed for the authority is not identical with that of any other corporation of this state or of any agency or instrumentality of this state or not so nearly similar as to lead to confusion and uncertainty, he or she shall receive and file it and shall record it in an appropriate book of record in his or her office.

(3) When the application has been made, filed, and recorded as provided in this chapter, the authority shall constitute a public body

and a body corporate and politic under the name proposed in the application.

(d)(1) The Secretary of State shall make and issue a certificate of incorporation pursuant to this chapter under the seal of the state and shall record the certificate with the application.

(2) The certificate shall set forth the names of the members.

(e)(1) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of State.

(2) A copy of the certificate, certified by the Secretary of State, shall be admissible in evidence in the suit, action, or proceeding and shall be conclusive proof of the filing and contents of the certificate.

(f)(1) Any application filed with the Secretary of State pursuant to the provisions of this chapter may be amended from time to time with the unanimous consent of the members of the authority as evidenced by ordinance or resolution of their governing bodies.

(2) The amendment shall be signed and filed with the Secretary of State in the manner provided in this section, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation.

(g)(1) The county quorum court may appoint one (1) additional director to the authority upon the recommendation of the county industrial development corporation.

(2) That additional director shall be a full voting director.

History. Acts 1979, No. 699, § 4; A.S.A. 1947, § 82-2734; Acts 2001, No. 611, § 1; 2005, No. 689, § 3.

14-233-106. New members — Withdrawal of old members.

(a)(1) After the creation of a sanitation authority, any other municipality, county, or district may become a member upon application to the authority, after adoption of an ordinance or resolution by its governing body making the determination prescribed in § 14-233-105 and authorizing the municipality, county, or district to participate, and with the unanimous consent of the members of the authority evidenced by ordinance or resolution of their governing bodies.

(2) Copies of the ordinances or resolutions, certified by the respective clerks or secretaries of the member municipalities, counties, and districts, together with an amendment to the application signed by the county judge, mayor, or presiding officer of each member and prospective member in the manner provided in § 14-233-105, shall be filed with the Secretary of State, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation setting

forth the then-current names of the member municipalities, counties, and districts.

(b)(1) Any municipality, county, or district may withdraw from a sanitation authority at any time without the consent of the other members of the authority. All contractual rights acquired and obligations incurred while the municipality, county, or district was a member shall remain in full force and effect.

(2) The withdrawal shall become effective upon the adoption of an ordinance by the withdrawing municipality or county or, in the case of a district, the adoption of a resolution, and the filing of the ordinance or resolution with the Secretary of State together with an amendment signed by the mayor of the withdrawing municipality, the county judge of the withdrawing county, or the presiding officer of a district in the manner provided in § 14-233-105, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation setting forth the then-current names of the member municipalities, counties, and districts.

History. Acts 1979, No. 699, § 4; A.S.A. 1947, § 82-2734; Acts 2005, No. 689, § 4.

14-233-107. Specific powers of authority.

Each sanitation authority shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To have perpetual succession as a body politic and corporate, and to adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter it at pleasure;

(3) To maintain an office at such places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with persons, firms, corporations, and others;

(6) To apply to the appropriate agencies of the state, the United States, or any state thereof, and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary, and to construct, maintain, and operate projects in accordance with, and to obtain, hold and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(7) To employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the authority and to

fix and pay their compensation from funds available to the authority therefor;

(8) To purchase all kinds of insurance including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property;

(9) To fix, charge, and collect rents, fees, and charges for the use of any project or portion thereof or for steam produced therefrom;

(10) To accomplish projects as authorized by this chapter and the ordinances creating the authority;

(11) To distribute steam produced by a project to any person, municipality, or county;

(12) To do any and all other acts and things necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to the authority by this chapter;

(13) To contract for the sale of electric energy produced by any such project, or to consume electric energy produced by any project;

(14) To own and operate as a project any public work authorized by law and undertaken by the authority for public use or benefit, including, but not limited to, wastewater treatment facilities, collection mains, interceptors, force mains, pump stations, and other appurtenances for collection, pumping, treatment, and disposal of wastewater, sludge, or treated effluent; and

(15)(A) To have and exercise the power of eminent domain for the purpose of acquiring rights-of-way, easements, other properties necessary in the construction or operation of its projects, property, or business under subdivision (14) of this section and exercised through the procedures under §§ 14-235-201 — 14-235-205 and 14-235-210;

(B) However, if an authority is created by two (2) or more municipalities, the authority shall disclose its intent to exercise the power of eminent domain by conducting an informational hearing before the quorum court of the county in which the power of eminent domain is exercised.

History. Acts 1979, No. 699, § 6; 1985, No. 678, § 4; A.S.A. 1947, § 82-2736; Acts 2003, No. 342, § 1.

14-233-108. Board of directors — Executive committee.

(a) Each sanitation authority shall consist of a board of directors appointed by the governing bodies of the members of the authority.

(b)(1) The number and voting rights of directors shall be determined as set forth in § 14-233-105 and shall not thereafter be changed except by unanimous consent of the members of the authority as evidenced by ordinances or resolutions of their governing bodies.

(2) Copies of all such ordinances or resolutions, certified by the respective clerks of the member municipalities and counties or secretaries of the member districts shall be filed with the Secretary of State.

(c) Before entering upon his or her duties, each appointed director shall take and subscribe to an oath of office in which he or she shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully his or her duties in the manner provided by law.

(d)(1) Except as may otherwise be provided in the application organizing the sanitation authority, the board of directors of the sanitation authority shall annually elect one (1) of the directors as chair, another as vice chair, and other persons, who may be but need not be directors, as treasurer, secretary, and if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary.

(2) The board of directors may also appoint such additional officers as it deems necessary.

(3) In the event the board of directors is organized so that no members of the board are actively involved in the actual handling and accounting for sanitation authority funds, the board of directors shall be authorized to waive any requirement for the purchase of a surety bond for the members of the board of directors.

(e)(1) The secretary or assistant secretary of the authority shall keep a record of the proceedings of the authority. The secretary shall be the custodian of all records, books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal.

(2) Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that the copies are true copies. All persons dealing with the authority may rely upon such certificates.

(f)(1) A majority of the directors of a sanitation authority then in office shall constitute a quorum. A vacancy in the board of directors of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(2) Any action taken by the authority under the provisions of this chapter may be authorized by resolution at any regular or special meeting. Each resolution shall take effect immediately and need not be published or posted. A majority of the votes which all directors are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution.

(g) No director of a sanitation authority shall receive any compensation for the performance of his or her duties under this chapter, but each director shall be paid:

(1) A per diem allowance of one hundred fifty dollars ($150) for attending each meeting of the board unless the board of directors sets a different per diem allowance by board resolution; and

(2) His or her necessary expenses incurred while engaged in the performance of such duties.

(h) The board of directors of a sanitation authority may create an executive committee of the board and may provide for the composition

of the executive committee so as to afford, in its judgment, fair representation of the member municipalities and counties. The executive committee shall have and exercise the powers and authority of the board of directors during intervals between the board's meetings as may be prescribed by its rules, motions, or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the rules of the board of directors of the authority.

History. Acts 1979, No. 699, § 5; 1985, No. 678, § 2; A.S.A. 1947, § 82-2735; Acts 1993, No. 170, § 1; 1999, No. 472, § 1; 2005, No. 689, § 5; 2007, No. 595, § 1.

Amendments. The 2007 amendment added the (g)(1) and (g)(2) designations; in (g), inserted "or her" and substituted "shall" for "may"; in (g)(1), substituted "one hundred fifty dollars ($150)" for "not more than one hundred dollars ($100)" and inserted "unless the board sets a different per diem allowance by board resolution"; and in (g)(2), added "or her" and made a stylistic change.

14-233-109. Bonds — Issuance, public hearing, execution, and sale.

(a) Sanitation authorities are authorized to use any available funds and revenues for the accomplishment of projects and may issue bonds, as authorized by this chapter, for the purpose of paying, financing, and refinancing project costs and accomplishing projects, either alone or together with other available funds and revenues.

(b)(1)(A) Prior to a sanitation authority's proposed issuance of bonds, the sanitation authority shall publish one (1) time in a newspaper of general circulation in each county that is a member of the sanitation authority and in each county in which a member of the sanitation authority is located:

(i) Notice of the proposed issuance of bonds;

(ii) The maximum principal amount of bonds contemplated to be sold;

(iii) A general description of the project contemplated to be financed or refinanced with bond proceeds; and

(iv) The date, time, and location of a public hearing at which members of the public may obtain further information regarding the bonds and the development of the project.

(B)(i) The location of the public hearing described in subdivision (b)(1)(A)(iv) of this section shall be in the county in which the project is located.

(ii) If the project is located in more than one (1) county, the location of the public hearing shall be in the county that has the greatest amount of territory of the counties in which the project is located.

(C) Notice under subdivision (b)(1)(A) of this section shall be published at least ten (10) days prior to the date of the hearing described in subdivision (b)(1)(A)(iv) of this section.

(2) A sanitation authority chair or his or her designee shall be responsible for conducting the hearing and shall request all public

comments that might pertain to the proposed issuance of bonds by the sanitation authority.

(3)(A) Upon compliance with the provisions of this section, no other notice, hearing, or approval by any other entity or governmental unit shall be required as a condition to the issuance by a sanitation authority of its contemplated bonds.

(B) The provisions of the Revenue Bond Act of 1987, § 19-9-601 et seq., do not apply to this section.

(4) The requirements of this subsection shall not apply to the issuance of bonds to refund bonds of the sanitation authority for which a public hearing was held.

(c)(1) The issuance of bonds shall be by resolution of the board of the sanitation authority.

(2) The bonds may be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons, may contain exchange privileges, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, not exceeding forty (40) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms, covenants, and conditions as the resolution may provide, including without limitation those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the authority and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(d) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the sanitation authority's properties involved may be controlled by the resolution authorizing the issuance of the bonds.

(e) Subject to the provisions of this chapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(f) The bonds may be sold at public or private sale for such price, including without limitation sale at a discount and in such manner the authority may determine by resolution.

(g) Bonds issued under this chapter shall be executed by the manual or facsimile signatures of the chairman and secretary of the board, but

one of such signatures must be manual. The coupons attached to the bonds may be executed by the facsimile signature of the chairman of the board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The seal of the sanitation authority shall be placed or printed on each bond in such manner as the board shall determine.

History. Acts 1979, No. 699, § 7; 1985, No. 678, § 3; A.S.A. 1947, § 82-2737; Acts 2007, No. 599, § 2.

Amendments. The 2007 amendment inserted "public hearing" in the section heading; inserted "financing, and refinancing" in (a); added (b) and redesignated the remaining subsections accordingly; substituted "sanitation authority's properties" for "project" in (d); and made a minor punctuation change in (f).

14-233-110. Bonds — Trust indenture.

(a) The resolution authorizing the bonds may provide for the execution by the authority with a bank or trust company within or without this state of a trust indenture that defines the rights of the holders and registered owners of the bonds.

(b) The resolution or indenture may control the priority between and among successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including without limitation those pertaining to the custody and application of proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security and pledging of revenues, the rights, duties, and obligations of the agency and the trustee for the holders or registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(c) The resolution or trust indenture authorizing or securing any bonds issued under this chapter may or may not impose a foreclosable mortgage lien upon or security interest in the project financed in whole or in part with the proceeds of the bonds or other properties of the authority, and the nature and extent of the mortgage lien or security interest may be controlled by the resolution or trust indenture, including without limitation provisions pertaining to the release of all or part of the authority's properties from the mortgage lien or security interest and the priority of the mortgage lien or security interest in the event of the issuance of additional bonds.

(d) Subject to the terms, conditions, and restrictions that may be contained in the resolution or trust indenture, any holder or registered owner of bonds issued under this chapter or of any coupon attached thereto may either at law or in equity enforce the mortgage lien or security interest and may by proper suit compel the performance of the duties of the members and employees of the sanitation authority as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1979, No. 699, § 7; A.S.A. 1947, § 82-2737; Acts 2007, No. 599, § 3.

Amendments. The 2007 amendment inserted "resolution or" in (b); in (c), inserted "or other properties of the authority" following the second occurrence of "bonds" and substituted "authority's" for "project"; and made punctuation changes throughout the section.

14-233-112. Bonds — Liability — Payment and security.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds are obligations only of the sanitation authority, and that in no event shall they constitute an indebtedness for which the faith and credit of the member municipalities, counties, or districts or any of their revenues are pledged.

(b) No member of the board of directors shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this chapter unless he or she shall have acted with corrupt intent.

(c) The principal of and interest on the bonds shall be payable from and may be secured by a pledge of revenues received by the sanitation authority or obligations of the owners of projects.

History. Acts 1979, No. 699, § 8; A.S.A. 1947, § 82-2738; Acts 2005, No. 689, § 6; 2007, No. 599, § 4.

Amendments. The 2007 amendment inserted "or she" in (b); and substituted "received by the sanitation authority" for "derived from the project acquired, constructed, reconstructed, equipped, extended, or improved, in whole or in part, with the proceeds of the bonds" in (c).

14-233-113. Refunding bonds — Issuance.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this chapter or any other interest-bearing indebtedness of the sanitation authority. Refunding bonds may be combined with bonds issued under the provisions of § 14-233-109 into a single issue.

(b) When refunding bonds are issued, they may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds or indebtedness being refunded or deposited in escrow for the retirement thereof.

(c) The resolution under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on and security interest in sanitation authority revenues and the sanitation authority's properties as was enjoyed by the bonds refunded by them.

History. Acts 1979, No. 699, § 9; A.S.A. 1947, § 82-2739; Acts 2007, No. 599, § 5.

Amendments. The 2007 amendment inserted "or any other interest-bearing indebtedness of the sanitation authority" in (a); deleted former (c) and redesignated former (d) as present (c); and in (c), substituted "sanitation authority revenues" for "project revenues" and "sanitation authority's properties" for "project."

14-233-114. Contracts with municipalities or counties — Rates, fees, and charges — Pledges.

(a) Any municipality or county that is a member of a sanitation authority may contract with the authority to utilize any project upon any terms and conditions as are deemed necessary, convenient, or desirable by the municipality or county and the authority including without limitation agreements on the part of the municipality or county for any period of time:

(1) To deliver all solid waste collected by or on behalf of the municipality or county to a particular project for disposal, treatment, or other handling;

(2) To prohibit by ordinance or other legal means the disposal, treatment, or other handling of solid waste within the corporate boundaries of the municipality or county by persons other than the sanitation authority or any person designated by the sanitation authority; and

(3) To deliver all or a certain amount of wastewater, sludge, or treated effluent from its sewer system to the project.

(b) Any municipality or county that is a member of a sanitation authority may:

(1) Require by ordinance or other legal means that solid waste generated or collected within the corporate boundaries of the municipality or county be delivered to a particular project for disposal, treatment, or other handling;

(2) Prohibit by ordinance or other legal means the collection, disposal, treatment, or other handling of solid waste within the corporate boundaries of the municipality or county by persons other than the municipality or county, the sanitation authority, or any persons designated by the municipality or county or the sanitation authority;

(3) Provide by ordinance or other legal means that no person other than as may be designated by the municipality or county or the sanitation authority shall engage in the collection or utilization of solid waste within the corporate boundaries of the municipality or county that would be competitive with the purposes or activities of the sanitation authority as provided in this chapter; and

(4) Covenant in connection with the issuance of bonds, notes, or other evidence of indebtedness to adopt any ordinance described in subdivisions (b)(1)-(3) of this section and that any ordinance so adopted shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidences of indebtedness remain outstanding.

(c) A sanitation authority is authorized to fix, charge, and collect rates, fees, and charges for disposal, treatment, or other handling of solid waste, wastewater, sludge, or treated effluent at a project. If duly authorized by the municipal or county members of a sanitation authority, the sanitation authority may implement the collection procedures through the personal property tax system provided for by § 8-6-211 or § 8-6-212. For as long as any bonds are outstanding and unpaid, the

rates, fees, and charges shall be so fixed by the authority as to provide revenues sufficient:

(1) To pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects and all necessary repairs, replacements, or renewals thereof;

(2) To pay when due the principal of, premium, if any, and interest on all bonds, including bonds subsequently issued for additional projects, payable from the revenues;

(3) To create and maintain reserves as may be required by any resolution or trust indenture authorizing or securing bonds; and

(4) To pay any and all amounts that the sanitation authority may be obligated to pay from project revenues by law or contract.

(d) Any pledge made by a sanitation authority pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues pledged and then held or thereafter received by the sanitation authority or any fiduciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the sanitation authority without regard to whether such parties have notice thereof.

(e) The resolution, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

History. Acts 1979, No. 699, § 10; 1985, No. 678, § 5; A.S.A. 1947, § 82-2740; Acts 1991, No. 1007, § 3; 2007, No. 599, § 6.

Amendments. The 2007 amendment added "for any period of time" in (a); added (a)(3) and made related changes; in (c), inserted "wastewater, sludge, or treated effluent" and substituted "sanitation" for "sanitation"; inserted "sanitation" preceding "authority" in (c)(4) and twice in (d); substituted "fiduciary" for "fidiciary" in (d); and made punctuation changes throughout the section.

14-233-119. Transfer of facilities to authority by county or municipality.

(a)(1) Any municipality or county may acquire facilities for a project or any portion thereof, including a project site, by gift, purchase, lease, or condemnation, and may transfer the facilities to a sanitation authority by sale, lease, or gift.

(2) The transfer may be authorized by ordinance of the governing body without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

(b) Any municipality may also contribute funds from its sewer system, grant funds, or proceeds of revenue bonds issued by it to pay, in whole or in part, the cost of a project which will be utilized by the municipality.

History. Acts 1979, No. 699, § 15; A.S.A. 1947, § 82-2745; Acts 2007, No. 599, § 7.

Amendments. The 2007 amendment

added the (a)(1) and (a)(2) designations; made a minor punctuation change in (a)(1); and added (b).

14-233-122. Purchasing procedures.

The board of each sanitation authority shall adopt county purchasing procedures, as provided in § 14-22-101 et seq., as the approved purchasing procedures for the sanitation authority.

History. Acts 1995, No. 163, § 2; 2007, No. 599, § 8.

Amendments. The 2007 amendment substituted "sanitation authority" for "district" at the end of the paragraph.

CHAPTER 234

WATERWORKS AND WATER SUPPLY

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

14-234-108. Cities of the first class — Sale or purchase of water to other municipalities.

(a)(1) A city of the first class owning or operating a waterworks system may sell, in its governmental capacity, water at contractual rates to another municipality of this state or to an improvement district created under the laws of this state.

(2) A municipality of this state or an improvement district created under the laws of this state may purchase, in its governmental capacity, water at contractual rates from a city of the first class of this state and may expend the necessary funds to connect its distribution system with the supply or other mains of the selling municipality.

(b)(1) The contract between two (2) municipalities of this state for the sale and purchase of water or between a municipality of this state and an improvement district created under the laws of this state for the sale and purchase of water shall be in writing, shall be authorized by ordinances adopted by the respective governing bodies of the contracting municipalities or by ordinance adopted by the governing body of the contracting municipality and by resolution adopted by the board of commissioners of the contracting improvement district, and shall be

signed by the mayor of each contracting municipality and by the chairman of the board of each contracting improvement district.

(2) Unless the Arkansas Natural Resources Commission is involved in the financing and determines that a different form or length of contract would be best in meeting the long-term water supply needs of the contracting parties, the contract may be for a term not to exceed twenty (20) years and may fix by its terms the rate or rates to be paid for the water for the entire term of the contract or may fix the rate or rates for the first year, two (2) years, or five (5) years, with appropriate provisions for arriving at the rate or rates for each succeeding one-year, two-year, or five-year period.

(3) The contract may also contain other appropriate provisions which will protect the respective interests of the contracting parties.

History. Acts 1949, No. 49, § 5; A.S.A. 1947, § 19-4269.2; Acts 1999, No. 1294, § 1.

14-234-119. Annual audits and procedures.

(a)(1) Any county, municipality, improvement district, or not-for-profit association or entity receiving fees from customers for providing sewage services shall obtain an annual financial audit of the system if the system has at least five hundred (500) service connections during any fiscal year.

(2) Any county, municipality, improvement district, or not-for-profit association or entity receiving fees from customers for providing water services shall obtain an annual financial audit of the system if the system has at least seven hundred fifty (750) service connections during any fiscal year.

(b)(1)(A) Any county, municipality, improvement district, or not-for-profit association or entity receiving fees from customers for providing sewage services and having at least one hundred (100) but less than five hundred (500) service connections during any fiscal year shall obtain an annual audit or an annual agreed-upon procedures and compilation report.

(B) Any county, municipality, improvement district, or not-for-profit association or entity receiving fees from customers for providing water services and having at least one hundred (100) but less than seven hundred fifty (750) service connections during any fiscal year shall obtain an annual audit or an annual agreed-upon procedures and compilation report.

(2) The agreed-upon procedures and compilation engagements shall be conducted in accordance with standards established by the American Institute of Certified Public Accountants and subject to minimum procedures prescribed by the Legislative Joint Auditing Committee.

(c) The audits or agreed-upon procedures and compilation reports shall be completed within one (1) year following each system's fiscal year end.

(d) Each entity shall choose and employ accountants who are licensed and in good standing with the Arkansas State Board of Public Accountancy.

History. Acts 1997, No. 272, § 1; 1999, No. 218, § 1; 2011, No. 605, § 1; 2011, No. 615, § 1.

Publisher's Notes. Acts 1999, No. 218, § 5, provided: "The provisions of this Act are applicable for fiscal periods beginning January 1, 1999 or thereafter."

Amendments. The 2011 amendment by No. 605 deleted "water or" preceding "sewage services" in (a)(1) and (b)(1)(A); and added (a)(2) and (b)(1)(B).

The 2011 amendment by No. 615, in (b)(1), deleted "report of" preceding "agreed-upon," and inserted "and compilation report" at the end; and rewrote (b)(2).

14-234-120. Filing of report.

Within thirty (30) days of completion of the audit report or the agreed-upon procedures and compilation report, the accountant performing the audit or agreed-upon procedures and compilation shall submit the report to the Legislative Auditor. The report shall be submitted in an electronic media format approved by the Legislative Auditor.

History. Acts 1997, No. 272, § 2; 1999, No. 218, § 2; 2011, No. 615, § 2.

Publisher's Notes. Acts 1999, No. 218, § 5, provided: "The provisions of this Act are applicable for fiscal periods beginning January 1, 1999 or thereafter."

Amendments. The 2011 amendment rewrote the section.

14-234-121. Review of audit report or report of agreed-upon procedures by board.

Each audit report or report of agreed-upon procedures shall be reviewed by the appropriate board at the next regularly scheduled open meeting after receiving the audit report or the report of agreed-upon procedures from the accountant.

History. Acts 1997, No. 272, § 3; 1999, No. 218, § 3.

Publisher's Notes. Acts 1999, No. 218, § 5, provided: "The provisions of this Act are applicable for fiscal periods beginning January 1, 1999 or thereafter."

14-234-122. Penalty provision.

Any entity not complying with §§ 14-234-119 — 14-234-121 may be subject to fines up to one thousand dollars ($1,000) by the Department of Health, the Arkansas Department of Environmental Quality, or the Arkansas Natural Resources Commission and any permits or licenses obtained from these agencies are subject to cancellation or non-renewal.

History. Acts 1997, No. 272, § 4; 1999, No. 218, § 4.

Publisher's Notes. Acts 1999, No. 218, § 5, provided: "The provisions of this Act are applicable for fiscal periods beginning January 1, 1999 or thereafter."

Subchapter 2 — Purchase and Construction

14-234-201. Definitions.

CASE NOTES

Cited: Lois Marie Combs Revocable Trust v. City of Russellville, 2011 Ark. 186, — S.W.3d — (2011).

14-234-214. Rates — Disposition of surplus funds.

CASE NOTES

Transfer of Funds.

Genuine issue of material fact existed regarding 1996 transfer of funds from from the city's water and sewer operating fund, and from its sanitation fund, to the city's general fund, as dispute existed about whether funds making the transfer had a surplus enabling them to make such a transfer, and thus, summary judgment grant to the city on the residents' two unlawful transfer claims regarding 1996 tansfers had to be reversed. Maddox v. City of Fort Smith, 346 Ark. 209, 56 S.W.3d 375 (2001).

Circuit court properly ruled that § 14-234-214(e) (1998) was inapplicable to the citizens' complaint challenging the lawfulness of transfers of funds from the water-and-sewer operating fund and the sanitation fund to the general fund where the term "surplus funds" referred to the disposition of rate-derived surplus funds, and the revenue transferred in this case was not rate-derived surplus, but was the city's portion of county sales tax revenue that was authorized by a county ordinance to be used for any municipal purpose. Maddox v. City of Fort Smith, 369 Ark. 143, 251 S.W.3d 281 (2007).

14-234-215. Eminent domain.

CASE NOTES

Cited: Lois Marie Combs Revocable Trust v. City of Russellville, 2011 Ark. 186, — S.W.3d — (2011).

Subchapter 3 — Waterworks Commissions

SECTION.

14-234-303. Ordinance — Qualifications of commissioners.

(a)(1)(A) Any city of the first class desiring to avail itself of the benefits of this subchapter shall enact an ordinance by a majority vote of the elected and qualified members of its city council creating a waterworks commission to be composed of no less than three (3) nor more than five (5) citizens who are qualified electors of the municipality or who are qualified electors of the area served by the municipality.

(B) Any waterworks commission of a city of the first class having less than five (5) members may have its membership increased at any time to no more than five (5) members by ordinance of the city council passed by the majority vote of the elected and qualified members of the city council.

(2) In all cities of the first class having a mayor-council form of government and having a population of not less than fifty thousand (50,000) persons according to the most recent federal decennial census, the waterworks commission shall be composed of five (5) members to be appointed and confirmed in the manner and to serve for the terms prescribed in this subchapter.

(b) Any city of the second class desiring to avail itself of the benefits of this subchapter, by a majority vote of the elected and qualified members of its city council, shall enact an ordinance creating a waterworks commission to be composed of not less than three (3) nor more than five (5) citizens who are qualified electors of the municipality or who are qualified electors of the area served by the municipality.

History. Acts 1937, No. 215, § 2; Pope's Dig., § 10019; Acts 1953, No. 413, § 1; 1957, No. 166, § 1; 1975, No. 359, § 1; 1981, No. 840, § 1; A.S.A. 1947, §§ 19-4220, 19-4220.1; Acts 1995, No. 789, § 1; 1999, No. 95, § 1; 2011, No. 525, § 1.

Amendments. The 2011 amendment deleted "duly" following "vote of the" in (a)(1)(A) and (B); substituted "less" for "fewer" for in (a)(1)(A) and (a)(1)(B); and added "or who are qualified electors of the area served by the municipality" at the end of (b).

Subchapter 6 — Collection of Delinquent Water Bills

Cross References. Arkansas Public Service Commission, § 23-2-101 et seq.

14-234-601. Definitions.

As used in this subchapter:

(1) "Water association" means any entity organized under the laws of the State of Arkansas, whether for profit or not for profit, that provides, distributes, transmits, treats, pumps, or stores raw or potable water for the benefit of members of the general public or commercial, industrial, and other users; and

(2) "Water system" means any entity that provides, distributes, transmits, treats, pumps, or stores raw or potable water, wastewater, or sewage for the benefit of members of the general public and commercial,

industrial, and other users, including without limitation, the following entities that perform such activities:

(A) Municipalities;
(B) Counties;
(C) Public facilities boards;
(D) Public water authorities;
(E) Central Arkansas Water;
(F) Regional water distribution districts; and
(G) Water associations.

History. Acts 2003, No. 769, § 1; 2007, No. 360, § 1.

Amendments. The 2007 amendment substituted "As used in" for "For purposes of" in the introductory language; substituted "entity organized under the laws of the State of Arkansas" for "corporation" in (1); and substituted "water, wastewater, or sewage" for "water to or" in (2).

14-234-602. Liability.

Any person who is delinquent on the payment for water, wastewater service, or sewer service provided by a water system may be held liable, at the discretion of a court of competent jurisdiction, for attorney's fees and costs incurred in the collection of the delinquency.

History. Acts 2003, No. 769, § 2; 2007, No. 360, § 2.

Amendments. The 2007 amendment inserted "wastewater service, or sewer service" and substituted "a court of competent jurisdiction" for "the court."

14-234-603. Refusal of water service for delinquency.

If a person who is delinquent on the payment of an undisputed bill for water service, wastewater service, or sewer service provided by a water system within this state moves into another area of this state and that person applies for or receives water from another water system, if the person's former water system establishes that there is no dispute that the delinquent amount is properly due and owed by that particular individual in that amount, the new water system shall refuse to provide water service to the delinquent person until the person provides proof of curing the delinquency.

History. Acts 2003, No. 769, § 3; 2007, No. 360, § 3.

Amendments. The 2007 amendment substituted "If" for "When" and inserted "wastewater service, or sewer service" and made a minor punctuation change.

14-234-604. Applicability.

No provision of this subchapter shall apply to a water system that is regulated by the Arkansas Public Service Commission as a public utility as provided in § 23-1-101(9).

History. Acts 2003, No. 769, § 4.

14-234-605. Termination of water service for delinquency.

A public water system that is not otherwise regulated by a municipality or municipal improvement district may terminate water service to a water user when the water user:

(1) Is more than twenty-five (25) days past the earliest due date shown on the face of the bill in making a payment for water, wastewater, or sewer service to the public water system or other public entity; and

(2) Has been sent notice via the United States Postal Service to an address provided by the water user that service will be terminated in no less than fifteen (15) days from date of mailing if the balance due on the service and any applicable late fees are not paid.

History. Acts 2011, No. 284, § 1.

CHAPTER 235

MUNICIPAL SEWAGE SYSTEMS

SUBCHAPTER.

Subchapter 2 — Operation of Systems by Municipalities

SECTION.

14-235-201. Definition.

As used in this subchapter, unless the context otherwise requires, the term "works" shall be construed to mean and include:

(1) The structures and property as provided in § 14-235-203;

(2) Storm water management;

(3) The creation and operation of a storm water utility;

(4) The creation and operation of a storm water department; and

(5) Other like organizational structures related to the disposal or treatment of storm water by municipalities.

History. Acts 1933, No. 132, § 1; Pope's Dig., § 9977; A.S.A. 1947, § 19-4101; Acts 2001, No. 986, § 1.

14-235-203. Authority generally.

CASE NOTES

In General.

The effective date of Acts 1997, No. 1336, was August 1, 1997, and the act is not to be applied retroactively; thus, the act does not apply to a facility on which construction was commenced prior to August 1, 1997. City of Dover v. Barton, 337 Ark. 186, 987 S.W.2d 705 (1999).

14-235-207. Powers and duties of sewer committee.

(a)(1)(A) The sewer committee shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this subchapter.

(B) Any contract relating to the financing of the acquisition or construction of any works or any trust indenture as provided in § 14-235-219 shall be approved by the municipal council before it shall be effective.

(2) The committee may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as, in its judgment, may be necessary in the execution of its powers and duties and may fix their compensation, all of whom shall do such work as the committee shall direct.

(3) All compensation and all expenses and liabilities incurred in carrying out the provisions of this subchapter shall be paid solely from funds provided under the authority of this subchapter, and the committee shall not exercise or carry out any authority or power given it in this subchapter so as to bind the committee or the municipality beyond the extent to which money has been or may be provided under the authority of this subchapter.

(4)(A) No contract or agreement with any contractor for labor or material exceeding the sum of twenty thousand dollars ($20,000) shall be made without advertising for bids.

(B) The bids shall be publicly opened and the award made to the best bidder, with power in the committee to reject any or all bids.

(b) After the construction, installation, and completion of the works or the acquisition of them, the committee shall:

(1) Operate, manage, and control them and may order and complete any extensions, betterments, and improvements of and to the works that it may deem expedient if funds for them are available, or are made available, as provided in this subchapter;

(2) Establish rules and regulations for the use and operation of the works and of other sewers and drains connected with them so far as they may affect the operation of the works; and

(3) Do all things necessary or expedient for the successful operation of the works.

(c) All public ways or public works damaged or destroyed by the committee in carrying out its authority under this subchapter shall be restored or repaired by the committee and placed in their original

condition, as nearly as practicable, if requested to do so by proper authority, out of funds provided by this subchapter.

History. Acts 1933, No. 132, § 3; Pope's Dig., § 9979; Acts 1979, No. 575, § 1; A.S.A. 1947, § 19-4103; Acts 2005, No. 1435, § 1.

Subchapter 3 — Sewer Connections by Property Owners

14-235-301. Penalties.

(a)(1) It is declared a misdemeanor for any person to:

(A) Injure, damage, or destroy any public sewer; or

(B) Fail or refuse to connect with or tap the sewers of a municipality within the time prescribed by an ordinance of the municipality.

(2)(A) Any person so offending shall be punished on conviction by fine or imprisonment, or both, at the discretion of the court, in any sum not more than five hundred dollars ($500) and for a period not longer than six (6) months.

(B)(i) An offender shall also be liable for all damages which shall be found by the jury.

(ii) The sum so found, judgment shall be rendered in favor of the municipality, and execution shall issue on it as on other judgments at law.

(b)(1) A city council shall have power by ordinance to compel all sewers built by private parties to be kept clean and in repair, by fine and punishment of the party in possession as owner or lessee of the property where the sewer is situated.

(2) The fine shall not exceed fifty dollars ($50.00) for any one (1) neglect, nor shall the imprisonment be more than ninety (90) days.

History. Acts 1881, No. 84, § 18, p. 161; 1907, No. 346, § 1, p. 834; C. & M. Dig., §§ 7542, 7543; Pope's Dig., §§ 9617, 9618; A.S.A. 1947, §§ 19-4129, 19-4130; Acts 2005, No. 279, § 1.

14-235-302. Ordering property owners to connect.

(a) After the completion of any sewer or branch sewer authorized to be built under the provisions of this act, it shall be lawful for any municipality to which this act is applicable, whenever in its opinion the public health will be promoted by it, to order any one (1) or more property owners near or adjacent to any sewer to construct upon their property sewers leading from some point or place on their premises to the sewer of the municipality for the purpose of:

(1) Draining off surface or other water; and

(2) Conducting any excrement that may be at or about the premises and filth of every nature, character, and description into the sewers belonging to the municipality.

(b) In the order issued to construct the sewers for the purpose presented, the time within which they are to be completed, the nature and character of the material to be used in the construction of them, and the place of tapping the sewers of the municipality shall be designated, as well as the manner of doing it.

History. Acts 1881, No. 84, § 18, p. 161; C. & M. Dig., § 7537; Pope's Dig., § 9612; A.S.A. 1947, § 19-4125; Acts 2005, No. 279, § 2.

14-235-303. Refusal of owner to connect.

(a)(1) If the owner of property shall fail, neglect, or refuse to connect the sewer as ordered in § 14-235-302 within the time prescribed in the order, unless further time is granted for the completion of the sewer, it shall be the duty of the municipality to cause the sewer to be constructed, by contract or otherwise, in as economic and substantial a manner as may be practicable.

(2) For that purpose, the municipality is authorized to enter upon, by its agents, contractors, and employees, any property on which they may order a sewer to be constructed, doing as little damage as possible.

(b)(1) When the construction has been completed and the cost ascertained, it shall become a charge and a lien upon the property.

(2)(A) The municipality is authorized and empowered to institute suit in any court having jurisdiction to enforce liens against real property, in the manner designated in § 14-90-1002 for the commencement of suits by the board of improvement, for the purpose of making the property chargeable for the lien provided in this section and the amount of the construction of the sewer, together with a twenty percent (20%) penalty for noncompliance with the order of the municipality.

(B)(i) When a decree has been obtained, the property shall be ordered sold in the manner provided in § 14-90-1101 et seq. and § 14-90-1201 et seq. for the sale of property.

(ii) All appeals to the Arkansas Supreme Court or the Arkansas Court of Appeals from decrees rendered against property under this section shall be prosecuted within the time and under the restrictions and limitations set forth in this act, and no injunction shall be issued by any court restraining the building of any sewer ordered by the municipality.

(c)(1) All notices and summons required in this section shall be served in the manner provided in § 14-90-1003 against resident as well as nonresident owners of property.

(2)(A) The court shall be open, as stated in § 14-90-1001.

(B) The same preference shall be given to suits commenced under this section.

(C) The same summary mode of proceeding shall be adopted in pleading and in all matters relating to the enforcement of the lien.

History. Acts 1881, No. 84, § 18, p. 161; C. & M. Dig., §§ 7538, 7539; Pope's Dig., §§ 9613, 9614; A.S.A. 1947, § 19-4126; Acts 2005, No. 279, § 3.

CHAPTER 236

ARKANSAS SEWAGE DISPOSAL SYSTEMS ACT

14-236-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Community sewage system" means any system, whether publicly or privately owned, serving two (2) or more individual lots, for the collection and disposal of sewage or industrial wastes of a liquid nature, including various devices for the treatment of the sewage or industrial wastes;

(2) "Department" means the Division of Environmental Health Protection of the Department of Health;

(3) "Homeowner" means a person who owns and occupies a building as his home;

(4) "Industrial wastes" means liquid wastes resulting from the processes employed in industrial and commercial establishments;

(5) "Individual sewage disposal system" means a single system of treatment tanks, disposal facilities, or both, used for the treatment of domestic sewage, exclusive of industrial wastes, serving only a single dwelling, office building, or industrial plant or institution;

(6) "Installer" means any person, firm, corporation, association, municipality, or governmental agency who for compensation constructs, installs, alters, or repairs individual sewage disposal systems for others;

(7) "Municipality" means a city, town, county, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly;

(8) "Person" means any institution, public or private corporation, individual, partnership, or other entity;

(9) "Potable water" means water free from impurities in an amount sufficient to cause disease or harmful physiological effects, with the bacteriological and chemical quality conforming to applicable standards of the State Board of Health;

(10) "Property owners association" means an association created by and pursuant to state law and organized for the purpose of maintaining

common facilities, including sewage disposal facilities in unincorporated subdivisions;

(11) "Domestic sewage" means all wastes discharging from sanitary conveniences and plumbing fixtures of a domestic nature, exclusive of industrial and commercial wastes;

(12) "Subdivision" means land divided or proposed to be divided for predominantly residential purposes into such parcels as required by local ordinances or, in the absence of local ordinances, the term "subdivision" means any land which is divided or proposed to be divided by a common owner or owners for predominantly residential purposes into three (3) or more lots or parcels, any of which contain less than three (3) acres, or into platted or unplatted units any of which contain less than three (3) acres, as a part of a uniform plan of development;

(13) "Authorized agent" means the sanitarian assigned to the county or local area by the Division of Environmental Health Protection of the Department of Health;

(14) "Designated representative" means a person designated by the authorized agent to make percolation tests, system designs, and inspections subject to the authorized agent's final approval. Designated representatives shall be registered professional engineers, registered land surveyors, licensed master plumbers, registered sanitarians, or other similarly qualified individuals holding current certificates from the State of Arkansas, and shall demonstrate to the satisfaction of the authorized agent prior to their designation as a designated representative their competency to make percolation tests, designs, and final inspections for individual sewage disposal systems in accordance with the rules and regulations promulgated pursuant to this chapter;

(15) "Alternate and experimental system" means a nonstandard individual sewage disposal system or treatment system which is classified as experimental in order to evaluate its potential effectiveness;

(16) "Septic tank manufacturer" means a person, firm, corporation, or association who manufactures septic tanks, package treatment plants, or other components for individual sewage disposal or treatment systems; and

(17) "Certified maintenance person" means an individual registered by the Department of Health to conduct assessments under this chapter.

History. Acts 1977, No. 402, § 3; A.S.A. 1947, § 19-5403; Acts 1987, No. 435, § 1; 2007, No. 939, § 1.

Amendments. The 2007 amendment added (17).

14-236-104. Certain individual systems excepted from chapter.

(a)(1) No individual sewage disposal system in existence on July 1, 1977, nor any individual sewage disposal system installed after July 1, 1977, in a subdivision, wherein individual lots have been developed or sold for use with individual sewage disposal systems, for which a plat

has been filed of record prior to July 1, 1977, shall be required to conform to more stringent specifications and requirements as to design, construction, density of improvements, lot size, and installation than those standards contained in any applicable, duly adopted, and published regulation in effect at the time of the platting of record of the subdivision.

(2) No individual sewage disposal system to be installed on a residential lot for which the Division of Environmental Health Protection of the Department of Health or its authorized agent has issued a construction permit on or before July 1, 1977, shall be required to conform to the design, construction, and installation provisions of this chapter, or any rules and regulations adopted pursuant thereto.

(3) In a subdivision for which a master plan has been approved by the Department of Health or the Arkansas Department of Environmental Quality prior to July 1, 1977, or for which the Department of Health or the Arkansas Department of Environmental Quality has otherwise previously issued its written approval for the installation of individual sewage disposal systems and where individual lots have been developed or sold in reliance upon the prior written approval, individual sewage disposal systems shall not be required to conform to more stringent specifications as to design, construction, and installation than those standards in effect at the time of or referred to in the prior written approval.

(b) However, any individual sewage disposal system which is determined by the Division of Environmental Health Protection of the Department of Health to be a health hazard or which constitutes a nuisance due to odor or unsightly appearance must conform with the provisions of this chapter and applicable rules and regulations within a reasonable time after notification that the determination has been made.

(c) The requirements of this chapter shall not apply to any individual sewage disposal system or alternate and experimental system which is situated on a tract of land ten (10) acres or larger, in which the field line or sewage disposal line is no closer than two hundred feet (200') to the property line.

History. Acts 1977, No. 402, §§ 7, 9; 1981, No. 484, § 1; A.S.A. 1947, §§ 19-5407, 19-5409; Acts 1987, No. 435, § 2; 1999, No. 1164, § 127.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

14-236-109. Property owners' associations — Powers and duties.

Property owners' associations that construct and maintain or have constructed and maintained sewage disposal facilities in accordance with the standards and regulations established by the Division of Environmental Health Protection of the Department of Health or the Arkansas Department of Environmental Quality shall have jurisdiction over the disposal of sewage within and for the subdivided area over which their authority extends and shall have general supervision and authority over the location, design, construction, installation, and operation of individual and community sewage disposal systems to the extent that the general supervision and authority is consistent with this chapter and the rules and regulations promulgated thereunder.

History. Acts 1977, No. 402, § 6; A.S.A. 1947, § 19-5406; Acts 1999, No. 1164, § 128.

14-236-111. Review of proposals and inspections.

(a)(1) The Division of Environmental Health Protection of the Department of Health or its authorized agent is authorized and directed to review proposals for individual sewage disposal systems and to make inspections of individual sewage disposal systems as may be necessary to determine substantial compliance with this chapter and regulations adopted hereunder. The systems shall not be used unless a permit for operation has been approved by the division or its authorized agent.

(2) In the event that an authorized agent has not been designated for a county or municipality or locality, applications for individual sewage disposal systems shall be made to the division.

(3) The division or its authorized agent shall either approve or disapprove the individual sewage disposal system design, and, if disapproved, the system shall not be installed until all deficiencies are corrected and the design approved by the Division of Environmental Health Protection of the Department of Health or its authorized agent.

(b) It shall be the duty of the installer to notify the division, its authorized agent, or his or her designated representative when the installation is to occur and it shall be the duty of the owner or occupant of the property to give the division, its authorized agent, or his or her designated representative free access to the property at reasonable times for the purpose of making such inspections as are necessary.

(c) Within five (5) working days, the installer shall certify to the division that the system has been installed pursuant to the approved permit.

(d) Any person aggrieved by the disapproval of an individual sewage disposal system shall be afforded review as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1977, No. 402, § 8; A.S.A. 1947, § 19-5408; Acts 2007, No. 939, § 5.

Amendments. The 2007 amendment substituted "Division of Sanitation Ser-

vices of the Department of Health" for "Division of Sanitation Services of the Division of Health of the Department of Health and Human Services" in (a)(1); substituted "division" for "Division of Sanitation Services of the Division of Health of the Department of Health and Human Services" throughout the section; inserted "a permit for operation has been" in (a); in (a)(2), substituted "The" for "Upon the basis of inspections, the," inserted "design," substituted "installed" for "used," and "design" for "system reinspected and"; in (b), substituted "installer" for "holder of a permit issued pursuant to this section," inserted "or her" twice, and substituted "to occur" for "ready for inspection"; rewrote (c); and substituted "system" for "installation" in (d).

14-236-116. Permits and registration fees — Annual training course — Transferability — Renewal.

(a)(1) A fee shall be levied for the review of individual sewage disposal permit applications as follows:

(A) For structures one thousand five hundred square feet (1,500 sq. ft.) or less, the fee to review a permit application is thirty dollars ($30.00);

(B) For structures more than one thousand five hundred square feet (1,500 sq. ft.) and less than two thousand square feet (2,000 sq. ft.), the fee to review a permit application is forty-five dollars ($45.00);

(C) For structures more than two thousand square feet (2,000 sq. ft.) and less than three thousand square feet (3,000 sq. ft.), the fee to review a permit application is ninety dollars ($90.00);

(D) For structures more than three thousand square feet (3,000 sq. ft.) and less than four thousand square feet (4,000 sq. ft.), the fee to review a permit application is one hundred twenty dollars ($120);

(E) For structures four thousand square feet (4,000 sq. ft.) and greater, the fee to review a permit application is one hundred fifty dollars ($150); and

(F) For the alteration, repair, or extension of any individual sewage disposal system, the fee to review a permit application is thirty dollars ($30.00).

(2)(A) In calculating the square footage of a residential structure for purposes of determining the applicable fee under this section, the square footage of all auxiliary areas of the residential structure shall not be considered.

(B) Auxiliary areas include garages, carports, porches, and other similar areas as determined by the Division of Environmental Health Protection of the Department of Health.

(b) An installer shall receive at least one (1) annual training course from an online, private, or governmental source approved by the Department of Health and pay a fee of one hundred dollars ($100) annually to maintain certification.

(c) A fee of one hundred dollars ($100) shall be levied annually for the registration of septic tank manufacturers.

(d) A designated representative must attend at least one (1) annual training course provided by the Department of Health and pay a one hundred dollar ($100) fee annually to maintain certification.

(e) A certified maintenance person must attend at least one (1) annual training course approved by the Department of Health and pay a fifty-dollar fee annually to maintain certification.

(f) The fee for the issuance of a review certificate under the provisions of this chapter to the person developing a subdivision shall be a minimum of one hundred dollars ($100) for one (1) lot and twenty-five dollars ($25.00) for each following lot, with a maximum of one thousand five hundred dollars ($1,500).

(g) Permit and regulation fees collected under this chapter shall be deposited in the State Treasury as follows:

(1) Five dollars ($5.00) of each permit fee collected for permits issued under subsection (a) of this section shall be credited to a special fund to be known as the "Individual Sewage Disposal Systems Improvement Fund" that is established on the books of the Treasurer of State, with such moneys to be used by the Division of Environmental Health Protection of the Department of Health, and in the manner recommended by the Individual Sewage Disposal Systems Advisory Committee, for the implementation of the utilization and application of alternate and experimental individual sewage disposal systems, as set forth in this chapter;

(2) The remainder of the fees collected for permits issued under the provisions of subsection (a) of this section and all of the net fees collected under the provisions of subsections (b)-(f) of this section shall be credited to the Public Health Fund, and the moneys shall be used only for the operation of the Onsite Wastewater Program of the Division of Environmental Health Protection of the Department of Health; and

(3) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the funds outlined in subdivision (g)(2) of this section that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(h)(1) Permits issued under subsections (b)-(d) of this section shall be nontransferable and shall be renewed annually.

(2) A late fee equal to one-half (½) of the renewal fee for any type of registration or certification shall be charged to renew a permit sixty (60) days after the annual expiration date.

History. Acts 1977, No. 402, § 9; 1983, No. 708, §§ 3, 4; A.S.A. 1947, § 19-5409; Acts 1987, No. 435, § 2; 1991, No. 873, § 2; 2005, No. 1864, § 1; 2005, No. 1928, §§ 1, 2; 2007, No. 939, § 2.

Amendments. The 2007 amendment substituted "thirty dollars ($30.00)" for "fifty dollars ($50.00)" in (a)(1)(F); substituted "one hundred dollars ($100)" for "fifty dollars ($50.00)" in (b); substituted "one hundred dollar ($100)" for "fifty dollar ($50.00)" in (d); added (e) and redesignated the remaining subsections accordingly; in (g)(2), substituted "(d), (e), and (f)" for "and (e)" and inserted "Onsite Wastewater Program of the"; and substituted "(g)" for "(f)" in (g)(3).

14-236-119. Registration of a certified maintenance person.

(a) Each certified maintenance person who operates within the State of Arkansas shall be registered by the Division of Environmental Health Protection of the Department of Health.

(b) The registration shall be issued by the division or its authorized agent upon compliance with this chapter and rules and regulations adopted under this chapter.

(c) The registration shall be renewed on January 1 of each year.

(d)(1) If a violation of this chapter occurs, a certified maintenance person's registration may be revoked without notice by the division.

(2) The certified maintenance person may appeal the revocation of the registration under the Administrative Procedure Act, § 25-15-201 et seq.

(e) Upon request by an authorized representative of the division, a certified maintenance person shall provide proof of registration.

(f) A certified maintenance person is subject to the penalties under § 14-236-106 for a violation of this chapter.

History. Acts 2007, No. 939, § 4.

Publisher's Notes. Former § 14-236-119, concerning bond, was repealed by Acts 2007, No. 939, § 3. The section was derived from Acts 2003, No. 1170, § 1; 2005, No. 1864, § 2.

CHAPTER 237

MUNICIPAL WATER AND SEWER DEPARTMENT ACCOUNTING LAW

14-237-101. Title.

This chapter shall be known and cited as "The Arkansas Municipal Water and Sewer Department Accounting Law".

History. Acts 1973, No. 148, § 1; A.S.A. 1947, § 19-5201; Acts 2011, No. 620, § 1.

Amendments. The 2011 amendment deleted "of 1973" at the end of the section.

14-237-104. Bank accounts.

All municipal water and sewer departments of this state shall maintain all funds in depositories approved for that purpose by law. The accounts shall be maintained in the name of the municipal water and sewer department.

History. Acts 1973, No. 148, § 3; A.S.A. 1947, § 19-5203; Acts 2011, No. 620, § 2.

Amendments. The 2011 amendment inserted "municipal" and deleted "of municipalities and incorporated towns" following "departments."

14-237-105. Prenumbered receipts or mechanical receipting devices.

(a)(1) All funds received are to be formally receipted at the time of collection or the earliest opportunity by the use of prenumbered receipts or mechanical receipting devices.

(2) However, the use of prenumbered receipts shall not be required for receipting revenues derived from the sale of water to individual consumers where the income is determined by periodic readings of meters and the individual consumer is billed for the water by means of a water bill, part of which must be returned by the consumer with his or her remittance. In those cases, the water and sewer department shall prepare a detailed monthly statement showing the amount billed to each consumer and posting the amount collected from each consumer on a monthly basis. A summary of the monthly statements shall be submitted to the governing body for its review.

(b) In the use of prenumbered receipts, the following minimum standards shall be met:

(1) If manual receipts are used, receipts are to be prenumbered by the printer and a printer's certificate obtained and retained for audit purposes. The certificate shall state the date printing was done, the numerical sequence of receipts printed, and the name of the printer;

(2) The prenumbered receipts shall contain the following information for each item receipted:

(A) Date;

(B) Amount of receipt;

(C) Name of person or company from whom money was received;

(D) Purpose of payment;

(E) Fund to which receipt is to be credited; and

(F) Identification of employee receiving the money;

(3) If manual receipts are used, the original receipt should be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt book and made available to the auditors during the course of annual audit. Additional copies of the receipt are optional with the water and sewer department and may be used for any purpose it deems fit.

(c) If an electronic receipting system is used, the system shall be in compliance with the Information Systems Best Practices Checklist provided by the Legislative Joint Auditing Committee.

History. Acts 1973, No. 148, § 4; A.S.A. 1947, § 19-5204; Acts 2011, No. 620, § 3.

Amendments. The 2011 amendment, in (a)(1), substituted "funds received" for "items of income," inserted "at the time of collection or the earliest opportunity," and deleted "such as cash registers or validating equipment" at the end; in (a)(2), inserted "or her" and substituted "governing body" for "commission"; added "If manual receipts are used" at the beginning of (b)(1) and (b)(3); substituted "Identifica-

tion" for "Signature" in (b)(2)(F); and rewrote (c).

14-237-106. Prenumbered checks — Electronic funds transfers.

(a) All disbursements of water and sewer department funds, except those described in this section and as noted in § 14-237-107, are to be made by prenumbered checks drawn upon the bank account of that department.

(b) An electronic funds transfer may be used for payment of debts provided that:

(1) The person responsible for the disbursement maintains a ledger including without limitation the following information:

(A) The name and address of the entity receiving payment;

(B) The routing number of the bank in which the funds are held;

(C) The account number and the accounts clearinghouse trace number pertaining to the transfer; and

(D) The date and amount transferred; and

(2) Written consent for payment by electronic funds transfer is given by the entity to whom the transfer is made.

(c) The checks shall be of the form normally provided by commercial banking institutions and shall contain, as a minimum, the following information:

(1) Date of issue;

(2) Check number;

(3) Payee;

(4) Amount; and

(5) Signature of two (2) authorized disbursing officers of the department.

(d) Disbursements of department funds used for payment of salaries and wages of department officials and employees may be made by electronic funds transfer provided that the department employee or official responsible for disbursements maintains a ledger containing at least the:

(1) Name, address, and social security number of the employee receiving payment of salary or wages;

(2) Routing number of the bank in which the funds are held;

(3) Account number and the accounts clearinghouse trace number pertaining to the transfer; and

(4) Date and amount transferred and proof that the employee has been notified of direct deposit of his or her salary or wages by electronic funds transfer.

(e) Disbursements of department funds, other than for payments under subsections (b) and (d) of this section, may be made by electronic funds transfer provided that:

(1) The department's governing body may establish an electronic funds payment system directly into payees' accounts in financial institutions in payment of any account allowed against the department.

(2) As used in this subsection, departments opting for an electronic funds payment system shall establish an electronic payment method

that provides for internal accounting controls and documentation for audit and accounting purposes.

(3) Each electronic payment method established under subdivision (e)(2) of this section shall be approved by the Legislative Joint Auditing Committee before implementation by the department.

(4) A single electronic funds payment may contain payments to multiple payees, appropriations, characters, or funds.

(f) A disbursement of department funds shall have adequate supporting documentation for the disbursement.

History. Acts 1973, No. 148, § 5; A.S.A. 1947, § 19-5205; Acts 2009, No. 642, § 1; 2011, No. 620, § 4.

Amendments. The 2009 amendment rewrote (a).

The 2011 amendment inserted "except those described in this section and as noted in § 14-237-107" in (a); deleted former (a)(1) and redesignated former (a)(2) as (b); inserted "may be" in the introductory paragraph of (b); redesignated former (b) as present (c) and deleted former (c); deleted "both in numerical and written form" following "Amount" in (c)(4); in (c)(5), inserted "two (2)" and substituted "officers" for "officer"; and added (d) through (f).

14-237-107. Petty cash funds.

(a) Municipal water and sewer departments are permitted to establish petty cash funds, so long as the funds are maintained as set forth in this section. The establishment of a petty cash fund must be approved by the department's governing body.

(b)(1) In establishing a petty cash fund, a check is to be drawn upon the bank account of the water and sewer department payable to "Petty Cash." That amount may be maintained in the water and sewer department offices for the handling of small expenditures for items such as postage, light bulbs, delivery fees, etc.

(2) A paid-out slip is to be prepared for each item of expenditure from that fund and signed by the person receiving the moneys. These paid-out slips shall be maintained with the petty cash.

(3) When the fund becomes depleted, the department may then draw another check payable to "Petty Cash" in an amount which equals the total paid-out slips issued, and at that time the paid-out slips shall be removed from the petty cash fund and utilized as invoice support for the check replenishing petty cash.

History. Acts 1973, No. 148, § 6; A.S.A. 1947, § 19-5206; Acts 2011, No. 620, § 5.

Amendments. The 2011 amendment substituted "department's governing body" for "commission" in (a).

14-237-108. Fixed asset records.

(a)(1) Each water and sewer department's governing body shall adopt a policy defining fixed assets.

(2) At a minimum, the policy shall set forth the dollar amount and useful life necessary to qualify as a fixed asset.

(b)(1) Each department shall establish by major category and maintain, as a minimum, a listing of all fixed assets owned by the department.

(2) The listing shall be totaled by category with a total for all categories.

(3) The categories of fixed assets shall include the major types, such as:

(A) Land;
(B) Buildings;
(C) Motor vehicles;
(D) Equipment; and
(E) Other.

(c) For each fixed asset, the listing shall contain, as a minimum:

(1) Property item number if used by the department;
(2) Brief description;
(3) Serial number, if available;
(4) Date of acquisition; and
(5) Cost of property.

History. Acts 1973, No. 148, § 7; A.S.A. 1947, § 19-5207; Acts 2011, No. 620, § 6.

Amendments. The 2011 amendment rewrote the section.

14-237-109. Cash receipts journal.

(a) Water and sewer departments shall establish a cash receipts journal or an electronic receipts listing, which shall indicate the:

(1) Receipt number;
(2) Date of the receipt;
(3) Payor;
(4) Amount of the receipt; and
(5) Classification or general ledger account.

(b) Classifications of the receipts shall include the major sources of revenue.

(c)(1) All items of receipts shall be posted to and properly classified in the cash receipts journal or electronic receipts listing.

(2)(A) The journal shall be properly balanced and totaled monthly and on a year-to-date basis.

(B) The journal shall be reconciled monthly to total bank deposits as shown on the department's bank statements.

(3)(A) The electronic receipts listing shall be posted to the general ledger at least monthly.

(B) The general ledger shall be reconciled monthly to total bank deposits as shown on the department's bank statements.

History. Acts 1973, No. 148, § 8; A.S.A. 1947, § 19-5208; Acts 2011, No. 620, § 7.

Amendments. The 2011 amendment rewrote the section.

14-237-110. Cash disbursements journal.

(a) Water and sewer departments shall establish a cash disbursements journal or electronic check register which shall indicate the date, payee, check number or transaction number, amount of each check written or transaction, and classification or general ledger account.

(b) The classifications of expenditures shall include the major type of expenditures by department, such as:

(1) Personal services;
(2) Supplies;
(3) Other services and charges;
(4) Capital outlay;
(5) Debt service; and
(6) Transfers out.

(c)(1) The cash disbursements journal shall be properly balanced and totaled monthly and on a year-to-date basis.

(2) The cash disbursements journal shall be reconciled monthly to total bank disbursements as indicated on the monthly bank statements.

(d)(1) The electronic check register shall be posted to the general ledger at least monthly.

(2) The general ledger shall be reconciled monthly to total bank disbursements as indicated on the monthly bank statements.

History. Acts 1973, No. 148, § 9; A.S.A. 1947, § 19-5209; Acts 2011, No. 620, § 8.

Amendments. The 2011 amendment rewrote the section.

14-237-111. Reconciliation of bank accounts.

(a)(1) All water and sewer departments shall reconcile on a monthly basis their cash receipts and disbursements journals to the amount on deposit in banks.

(2) This reconciliation shall be approved by an official or employee, other than the person preparing the reconciliation, as designated by the governing body of the department.

(3) The reconciliations should take the following form:

Water and Sewer Department of .....

Date .....

Amount Per Bank Statement Dated			$ .00
Add:	Deposits in transit (Receipts recorded in Cash Receipts Journal not shown on this bank statement).		
DATE	RECEIPTS NO.	AMOUNT	
		$ .00	
		.00	
		.00	.00
Deduct:	Outstanding Checks (Checks issued and dated prior to date of bank statement per Cash Disbursements Journal not having yet cleared the bank).		

CHECK NO.	PAYEE	AMOUNT	
		$ .00	
		.00	
		.00	.00
RECONCILED BALANCE			$ .00

(b) This reconciled balance shall agree with either the cash balance as shown on the department's check stubs running bank balance or the department's general ledger cash balance, whichever system the department employs.

History. Acts 1973, No. 148, § 10; A.S.A. 1947, § 19-5210; Acts 2011, No. 620, § 9.

Amendments. The 2011 amendment subdivided part of (a); and added (a)(2).

14-237-112. Maintenance and destruction of accounting records.

(a) Accounting records can basically be divided into three (3) groups:
(1)(A) Support Documents. Support documents consist primarily of the following items:
(i) Canceled checks;
(ii) Invoices;
(iii) Bank statements;
(iv) Receipts;
(v) Deposit slips;
(vi) Bank reconciliations;
(vii) Check book register or listing;
(viii) Receipts listing;
(ix) Monthly financial reports;
(x) Payroll records;
(xi) Budget documents; and
(xii) Bids, quotes, and related documentation.
(B) These records shall be maintained for a period of at least four (4) years and shall not be disposed of before any required audit for the period in question;
(2)(A) Semipermanent Records. Semipermanent records consist of:
(i) Fixed-asset records and equipment detail records;
(ii) Investment and certificate of deposit records;
(iii) Journals, ledgers, or subsidiary ledgers; and
(iv) Annual financial reports.
(B)(i) These records shall be maintained by the water and sewer department for a period of not less than seven (7) years and shall not be disposed of before any required audit for the period in question.
(ii) For investment and certificate of deposit records, the seven (7) years of required maintenance will begin on the date of maturity.
(3)(A) Permanent Records. Permanent records consist of:
(i) Minutes;

(ii) Employee retirement documents; and

(iii) Annual financial audits.

(B) These records shall be maintained permanently.

(b) When documents are destroyed, the department shall document the destruction by the following procedure:

(1) An affidavit is to be prepared stating which documents are being destroyed and to which period of time they apply, indicating the method of destruction. This affidavit is to be signed by the department's employee performing the destruction and one (1) member of the governing body;

(2) In addition, the approval of the governing body for destruction of the documents shall be obtained and an appropriate note of the approval indicated in the governing body's minutes along with the destruction affidavit. Governing body approval shall be obtained before the destruction.

History. Acts 1973, No. 148, § 12; 1979, No. 616, § 1; A.S.A. 1947, § 19-5212; Acts 2011, No. 620, § 10.

Amendments. The 2011 amendment substituted "three (3)" for "two (2)" in the introductory paragraph of (a); inserted (a)(1)(A)(iv) through (xii); in (a)(1)(B), substituted "four (4)" for "three (3)" and "before any required audit" for "prior to being audited"; rewrote (a)(2); inserted (a)(3); substituted "member of the governing body" for "commission member" in (b)(1); and, in (b)(2), substituted "governing body" for "commission," "governing body's" for "commission's," and "Governing body" for "Commission.".

14-237-113. Annual publication of financial statements.

(a)(1) The governing body of each municipal water or sewer department shall cause to be published annually a financial statement of the department, including receipts and expenditures for the period and a statement of the indebtedness and financial condition of the department. The financial statement shall be published one (1) time in a newspaper published in the municipality.

(2) The financial statement shall be at least as detailed as the minimum record of accounts as provided in this chapter.

(3) The financial statement shall be published by April 1 of the following year.

(b) In municipalities where no newspaper is published, the financial statement shall be posted in two (2) public places in the municipality.

History. Acts 1973, No. 148, § 15 as added by 1977, No. 309, § 1; A.S.A. 1947, §§ 19-5213, 19-5214; Acts 2011, No. 620, § 11.

Amendments. The 2011 amendment rewrote (a)(1), (a)(3), and (b).

CHAPTER 238

RURAL WATERWORKS FACILITIES BOARDS

Effective Dates. Acts 1999, No. 942, § 7: Mar. 29, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that many water associations and other nonprofit corporations providing water and sewer services could serve their customers better by transferring their operations to a rural waterworks facilities board, and that current law does not provide users with adequate opportunity to participate in making recommendations to the board and in the selection of board members. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-238-108. Members — Compensation.

(a) Each board shall consist of five (5) members unless there is an expansion of the board to provide services outside the county which created it.

(b)(1) The initial members shall be appointed by the county judge of the creating county for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively.

(2) When a rural waterworks facilities board is created to assume the operations of an existing nonprofit corporation that provides water or sewer service, the county judge shall appoint the initial members from a list of nominees provided by the nonprofit corporation's board of directors.

(3) Successor members shall be elected by a majority of the board or by alternative member selection as set forth in § 14-238-124 for terms of five (5) years.

(4) Each member shall serve until his successor is elected and qualified.

(5) A member shall be eligible to succeed himself.

(c) Each member shall qualify by taking and filing with the clerk of the county creating the board his or her oath of office in which he or she shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully his or her duties in the manner provided by law.

(d) In the event of a vacancy in the membership of the board, however caused, a majority of the board shall elect a successor member to serve the unexpired term.

(e) The members of the board shall receive no compensation for their services but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of their duties.

(f) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty by the county judge of the county which created the board, after reasonable notice of and an opportunity to be heard concerning the alleged grounds for removal.

(g)(1)(A) If the jurisdiction of a board, pursuant to interlocal agreements, expands to provide services outside the boundaries of the county from which it obtains power, then not more than two (2) additional members per county may be added pursuant to the terms of any relevant interlocal agreement.

(B) These members shall initially be appointed by the county judge of the noncreating county and shall serve for a term agreed upon in the interlocal agreement, provided that the term shall not exceed five (5) years.

(2)(A) The other provisions of this section shall apply to these additional members.

(B) Provided, no additional member shall be eligible to serve as chairman of the board.

History. Acts 1995, No. 617, § 8; 1999, No. 942, § 1.

Cross References. Compensation of State boards, § 25-16-901 et seq.

14-238-110. Meetings — Quorum — Actions — Records.

(a)(1) Each board shall meet upon the call of its chairman or a majority of its members and at such times as may be specified in its bylaws for regular meetings.

(2) At least annually, the board shall hold a users meeting at which time it shall accept comments and recommendations from its users. The meeting may be held in conjunction with a regular board meeting. Notice of the users meeting shall be sent by first-class mail to each user and may be sent with the user's bill.

(3) A majority of its members shall constitute a quorum for the transaction of business.

(4) No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(b)(1) The affirmative vote of a majority of the members present at a meeting of the board shall be necessary for any action taken by the board.

(2) Any action taken by the board shall be by resolution, and such resolution shall take effect immediately unless a later effective date is specified in the resolution.

(c)(1) The secretary of the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board and of the minute book or journal of the board and of its official seal.

(2) The secretary may cause copies to be made of all minutes and other records and documents of the board. He may give certificates under the official seal of the board to the effect that the copies are true copies, and all persons dealing with the board may rely upon the certificates.

(3) Records and documents of the boards shall be preserved and maintained at such locations and in such manner as prescribed by ordinance of the county which created the boards.

History. Acts 1995, No. 617, § 10; 1999, No. 942, § 2.

14-238-124. Alternative membership selection.

(a) If so prescribed, successor members shall be elected by a majority of members from a list of nominated candidates.

(b) A candidate may be nominated by petition of twenty-five (25) users or ten percent (10%) of the number of total users as of January 1 preceding the election, whichever is less. A petition shall be filed thirty (30) days prior to the expiration of the term of the member whose seat the candidate seeks.

(c) Each water or sewer service connection, or both, shall be considered a "user" for purposes of this chapter.

(d) Use of this alternative member selection may be prescribed by the ordinance creating the board or the board may irrevocably select this method of member selection by properly adopted resolution. The resolution shall be filed with the county clerk of the creating county.

History. Acts 1999, No. 942, § 3.

SUBTITLE 15. SOLID WASTE DISPOSAL, WATERWORKS, AND SEWER IMPROVEMENT DISTRICTS

CHAPTER 250

WASTEWATER TREATMENT DISTRICTS

SECTION.

14-250-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Acquire" means and includes construct or acquire by purchase, lease, devise, gift, or other mode of acquisition;

(2) "Board" or "board of directors" means the board of a wastewater district organized under the authority of this chapter;

(3) "Department" means the Arkansas Department of Environmental Quality;

(4) "District" or "wastewater district" means a nonprofit regional wastewater treatment district organized under the authority of this chapter;

(5) "Obligation" includes bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a regional wastewater district formed under this chapter; and

(6) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state agency, state or political subdivision thereof, municipality, or any body politic.

History. Acts 1983, No. 608, § 2; A.S.A. 1947, § 20-2302; Acts 1999, No. 1164, § 129.

SUBTITLE 16. PUBLIC HEALTH AND WELFARE GENERALLY

CHAPTER 262

LOCAL HEALTH AUTHORITIES

14-262-102. City board of health.

(a) A city of the first class or city of the second class may establish a city board of health to be constituted as follows:

(1) The mayor of the city may appoint no fewer than five (5) persons, two (2) of whom shall be physicians who shall be graduates of reputable medical colleges and of good professional standing, who shall constitute a city board of health, and who shall have and exercise the powers conferred upon those boards by law and by the ordinances of the city; and

(2) The mayor of the city shall be an ex officio member of the board.

(b)(1) The city council shall have the power to establish a board of health.

(2) The board shall have jurisdiction for one (1) mile beyond the city limits, and for quarantine purposes, in cases of epidemic, five (5) miles.

(c) The city council shall have power to invest the board with such powers and impose upon it such duties as shall be necessary to:

(1) Secure the city and its inhabitants from the evils of contagious, malignant, and infectious diseases;

(2) Provide for its proper organization and the election or appointment of the necessary officers; and

(3) Make such bylaws, rules, and regulations for its government and support as shall be required for enforcing the prompt and efficient performance of its duties and the lawful exercise of its powers.

History. Acts 1875, No. 1, § 6, p. 1; 1913, No. 96, § 14; C. & M. Dig., §§ 5154, 7593; Pope's Dig., §§ 6433, 9679; A.S.A. 1947, §§ 82-203, 82-204; Acts 2003, No. 282, § 1.

CASE NOTES

Nuisances.

In a case involving a rock quarry that was located entirely outside, but within one mile of, the corporate limits of a city in which a district court issued a preliminary injunction enjoining Fayetteville, Ark. Ordinance No. 5280 prior to its enforcement date, city argued that the company that operated the quarry was unlikely to succeed on the merits of its claim that the city authority to license and regulate its quarry, because the ordinance was enacted pursuant to § 14-54-103(1). Contrary to the city's argument, since the quarry was located outside the corporate city limits but within one mile of those limits, the city could not regulate the quarry without a judicial determination that its activities constituted a nuisance, and no such judicial determination had been made; the quarry was not a nuisance per se. Rogers Group, Inc. v. City of Fayetteville, 629 F.3d 784 (8th Cir. 2010).

14-262-103. City health officer.

(a) The office of city health officer may be created by the governing body of a city of the first class, city of the second class, or an incorporated town.

(b) The office of city health officer shall be filled by a competent physician who is legally qualified to practice medicine within this state, a graduate of a reputable medical college, and of reputable professional standing.

(c)(1)(A) It is the duty of the mayor of each incorporated city and town within this state to elect a qualified person to the office of city health officer if the governing body of the city or town creates the office.

(B) The appointment shall be approved by a majority of the votes of the city or town council.

(2) After appointment, the city health officer shall:

(A) Take and subscribe to the constitutional oath of office;

(B) File a copy of the appointment with the State Board of Health, and

(C) Shall not be deemed to be legally qualified until the copies have been so filed.

(d)(1) Each city health officer shall perform such duties as may be required by the ordinances of his or her city or town.

(2) The officer shall discharge and perform such duties as may be prescribed for him or her under the directions, rules, regulations, and requirements of the board.

(3) The officer shall be required to aid and assist the board in all matters of quarantine, vital and mortuary statistics, inspection, disease

prevention and suppression, and sanitation within his or her jurisdiction.

(4) The officer shall at all times report to the board, in such manner and form as shall be prescribed by the board, the presence of all contagious, infectious, and dangerous epidemic diseases within his or her jurisdiction and shall make such other and further reports in the manner and form and at the times as the board shall direct, touching all matters as may be proper for the board to direct.

(5) The officer shall aid the board at all times in the enforcement of proper rules, regulations, and requirements in the enforcement of all sanitary laws, quarantine regulations, and vital statistics collections and shall perform any other duties the board shall direct.

(e) The compensation of city health officers shall be fixed by the mayor and council of the respective towns and cities within this state.

History. Acts 1913, No. 96, §§ 15-20; C. & M. Dig., §§ 5155-5160; Pope's Dig., §§ 6434-6439; A.S.A. 1947, §§ 82-205 — 82-210; Acts 2003, No. 282, § 2.

14-262-104. County health officer.

(a) The office of county health officer is created in each county within the state.

(b) The State Board of Health, upon recommendation of the county judge, shall appoint for each county in this state a health officer who shall serve a term of four (4) years and may be reappointed for additional terms.

(c)(1) The county health officer shall be a graduate of an accredited and reputable medical or osteopathic university, shall be licensed to practice medicine in Arkansas, and shall have had at least three (3) years' experience in the practice of medicine in this state.

(2) Time spent in the practice of medicine while in the services of the armed forces of the United States shall be accepted as equivalent to time spent in the practice of medicine in Arkansas.

(d)(1)(A) The county health officer shall serve as a key public health representative in the local community.

(B) The duties of the county health officer shall include without limitation:

(i) Promoting the use of local health unit services;

(ii) Advocating for public health policy initiatives with local and state policy makers;

(iii) Providing assistance to local public health education and promotion of initiatives; and

(iv) Establishing a regular communication process with the local health unit administrator.

(2) The county health officer also shall aid and assist the State Board of Health and collaborate with the State Health Officer and the Department of Health in county emergency preparedness response and planning including without limitation:

(A) Implementing orders of the State Health Officer if isolation, quarantine, or emergency legal measures are required;

(B) Participating in the development, review, or both development and review of local emergency plans; and

(C) Serving as a local spokesperson to media, general public, and medical community in the event of a public health emergency.

(3) The county health officer also shall support the board, the State Health Officer, and the department with any infectious or communicable disease outbreaks by without limitation:

(A) Assisting in containment and management of an infectious disease outbreak under the direction of state public health officials;

(B) Providing prescriptive support for medication as appropriate; and

(C) Serving as local spokesperson to media, the community at large, and the medical community in the event of infectious disease outbreak based on information provided by the department.

(e) The county health officer shall make reports to the board and the department as requested.

(f) The county health officer also shall perform other duties as prescribed under rules of the board.

(g) The county health officer may receive an annual salary to be fixed by the county court, which may be payable monthly out of the county treasury.

(h) Upon the failure of the county health officer to perform the duties of his or her office, as required by this section, he or she may be removed by the board.

(i) When performing official duties, a county health officer is immune from civil suit and liability in the same manner officers and employees of the State of Arkansas are immune under § 19-10-305 and Arkansas Constitution, Article 5, § 20.

History. Acts 1913, No. 96, § 13; C. & M. Dig., § 5153; Pope's Dig., § 6432; Acts 1949, No. 79, § 1; A.S.A. 1947, § 82-201; Acts 2009, No. 696, § 1.

Amendments. The 2009 amendment, in (b), substituted "upon recommendation" for "with the approval" and substituted "four (4) years and may be reappointed for additional terms" for "two (2) years"; subdivided (c) and substituted "an accredited and reputable medical or osteopathic university, shall be licensed to practice medicine in Arkansas" for "a reputable medical college" in (c)(1); rewrote (d); inserted (e), (f), and (i), and redesignated the remaining subsections accordingly; and made related and minor stylistic changes.

CHAPTER 263

BOARD OF GOVERNORS FOR COUNTY HOSPITALS

SECTION.

14-263-103. Creation.

(a) There is created in each county in this state owning a county hospital a board of governors which shall be charged with the responsibility of the management, control, and operation of the county hospital as provided in this chapter.

(b)(1) If there is more than one (1) county hospital in any one (1) county, the hospitals may be operated under the management and control of a single board of governors, or the quorum court of the county, if it so elects, may establish, by an appropriate ordinance, a board of governors of each county hospital.

(2) The ordinance of the quorum court providing for a separate board of governors for each such hospital shall designate the county hospital over which each board shall have jurisdiction.

(3) When the quorum court establishes a separate board of governors for each county hospital in the county, each board of governors shall be constituted, shall be appointed, and shall have the duties, powers, and responsibilities with reference to the county hospital over which it has jurisdiction as specified in this chapter.

(c) The existence of a board of governors is no longer required once the county rather than the board of governors has leased the hospital facilities in accordance with § 14-263-106.

History. Acts 1977 (Ex. Sess.), No. 13, § 1; A.S.A. 1947, § 17-1501; Acts 2007, No. 561, § 1.

Amendments. The 2007 amendment added (c).

14-263-106. Contracting or leasing of hospital facilities.

(a)(1) Should the board of governors determine that it would be in the best interests of the citizens of the county that the hospital be operated or leased to an individual, a firm, or a corporation, the board of governors may contract or lease the equipment and hospital facilities to the individual, firm, or corporation for a period of time and for consideration and conditions the board of governors may deem wise, subject to approval of the contract or lease by the county judge and the quorum court of the county in which the hospital is located.

(2) With the recommendation of the board of governors, the county may be the lessor of the hospital rather than the board.

(3) Once a lease has been entered into by the county rather than the board of governors, there shall be no requirement for a future recommendation by the board of governors for a subsequent lease by the board of governors before entering into the lease, and the county may enter into contracts concerning the hospital without the recommendation of the board of governors.

(b) If the county rather than the board of governors leases the hospital facilities in accordance with subsection (a) of this section, the duties of managing, controlling, and supervising the operation of the county hospital, as described in § 14-263-105, shall be imposed upon the lessee, which shall eliminate the requirement that a board of

governors submit monthly reports or be in place for the duration of the term of the lease and any extensions thereof, unless the quorum court and county judge determine the board should continue in its existence or should be reinstated.

(c) Once the board of governors has made its initial determination that it is in the best interests of the citizens of the county to lease the hospital, the county, if it is the lessor, will thereafter be responsible for all matters pertaining to the lease, the facilities, and the lessee, including without limitation:

(1) Renewal or extension of the lease; or

(2) Any conflicts that may arise pertaining to the lease or the lessee.

(d)(1) This section applies to all hospital leases adopted before July 31, 2007, adopted or entered under the authority of this section.

(2) All such leases adopted or entered into before July 31, 2007, shall be considered for all purposes as if adopted or entered into under this section.

(3) A lease adopted before July 31, 2007, shall not be held to be invalid by reason of § 14-263-103 and this section.

History. Acts 1977 (Ex. Sess.), No. 13, § 4; A.S.A. 1947, § 17-1504; Acts 2007, No. 561, § 2.

Amendments. The 2007 amendment rewrote the section.

CHAPTER 266

MUNICIPAL AMBULANCE LICENSING

SECTION.

14-266-103. Definitions.

As used in this chapter:

(1) "Emergency medical services" means the transportation and emergency medical services personnel care provided to the critically ill or injured before arrival at a medical facility by licensed emergency medical services personnel and within a medical facility subject to the individual approval of the medical staff and governing board of that facility.

(2)(A) "Nonemergency ambulance services" means the transport in a motor vehicle to or from medical facilities, including without limitation hospitals, nursing homes, physicians' offices, and other health care facilities of persons who are infirm or injured and who are transported in a reclining position.

(B) "Nonemergency ambulance services" does not include not-for-hire on a fee-for-service basis transportation furnished by licensed hospitals and licensed nursing homes to their own admitted patients or residents and individual not-for-hire transportation.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903; Acts 2009, No. 689, § 3; 2011, No. 778, § 4.

Amendments. The 2009 amendment deleted "unless the context otherwise requires" at the end of the introductory language; in (1), substituted "emergency medical services personnel" for "emergency medical technician" and "licensed emergency medical services personnel" for "a certified emergency medical technician (EMT)"; subdivided (2); and made related and minor stylistic changes.

The 2011 amendment deleted "However" at the beginning of (2)(B).

14-266-105. Grant of authority.

(a) Cities of the first class and cities of the second class are authorized:

(1)(A) To enact and establish standards, rules, and regulations that are equal to or greater than those established by the state concerning emergency medical services, as defined in this chapter, and emergency medical services personnel, emergency and nonemergency ambulances, and ambulance companies, as defined under §§ 20-13-201 — 20-13-209 and 20-13-211.

(B) However, the standards, rules, and regulations shall not be less than those established by this state;

(2) To establish, own, operate, regulate, control, manage, permit, franchise, license, and contract with, exclusively or otherwise, emergency medical services, ambulances, ambulance companies, and their relative properties, facilities, equipment, personnel, and any aspects attendant to emergency medical services and ambulance operations, whether municipally owned or otherwise, including without limitation:

(A) Rates;

(B) Fees;

(C) Charges; and

(D) Other assessments the cities consider proper to provide for the health, safety, and welfare of their citizens;

(3) To establish an Emergency Medical Health Care Facilities Board, hereinafter called "Emergency Medical Services Board" or "EMS Board", under the Public Facilities Boards Act, § 14-137-101 et seq., and to exercise all the powers conferred in this chapter and the power conferred under the Public Facilities Boards Act, § 14-137-101 et seq., either alone or in conjunction with the EMS Board;

(4) To provide emergency medical services to its residents and to the residents of the county, surrounding counties, and municipalities within those counties, but only if the governing bodies of the counties and municipalities request and authorize the service under § 14-14-101, §§ 14-14-103 — 14-14-110 or § 25-20-101 et seq.;

(5)(A) To regulate all intracity patient transports, all intercity patient transports, and all intracounty patient transports originating from within the regulating city. However, this chapter shall not restrict or allow local regulation of not-for-hire on a fee-for-service basis transportation or intercity patient transports to medical facilities within the regulating city originating from anywhere outside the regulating city, except as provided in subdivisions (a)(5)(B) and (D) of this section;

(B)(i) To regulate patient transports, by the patient's choice of either the emergency medical service provided by the regulating city or the emergency medical service provided by the medical facility, to the regulating city originating from a medical facility outside the regulating city or cooperative governmental unit.

(ii) If the medical facility does not operate an emergency medical service and the patient has chosen to be transported by the medical facility, then the patient shall be transported by the emergency medical service provided by the city in which the medical facility is located;

(C) To regulate patient transports originating from within the regulating city by emergency medical service providers with an existing special purpose license issued by the Department of Health on the effective date of this act; and

(D) To regulate patient transports authorized by the regulating city's franchised emergency medical service provider in a mutual aid agreement if the franchised emergency medical service provider is not able to provide patient transports in a timely manner under the franchise agreement.

(b)(1) A city regulating ambulance companies which contracts with private ambulance companies under this chapter shall permit those companies to offer ambulance services outside its boundaries.

(2) A city regulating ambulance services, which municipally owns or operates those services, shall provide ambulance services to those surrounding areas whose governing bodies request and authorize those services but only if mutually agreeable contracts can be reached to provide those services.

(3) All direct and indirect costs of extending those services shall be borne entirely by patient user fees or subsidies provided by the patient, municipality, or county to whom those services are rendered.

(4) In no event shall the city extending ambulance services beyond its boundaries be required in any manner to subsidize or otherwise extend financial support to render those services.

(c) The city shall have the same authority to regulate nonemergency ambulance services.

History. Acts 1981 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 19-5903; Acts 1989, No. 196, § 2; 2009, No. 689, § 4; 2009, No. 1448, § 1.

Amendments. The 2009 amendment by No. 689 subdivided (a)(1) and substituted "emergency medical services personnel" for "emergency medical technicians" in (a)(1)(A); subdivided (a)(2) and (a)(5); and made related and minor stylistic and punctuation changes.

The 2009 amendment by No. 1448 substituted "the Public Facilities Boards Act, § 14-137-101 et seq." for "§§ 14-137-101 — 14-137-123" in two places in (a)(3); in (a)(5), inserted (a)(5)(B) through (D), rewrote and redesignated the existing text of (a)(5) accordingly; and made related and minor stylistic changes.

CHAPTER 268

FLOOD LOSS PREVENTION

CASE NOTES

Cited: Hurst v. Holland, 347 Ark. 235, 61 S.W.3d 180 (2001).

14-268-102. Definitions.

As used in this chapter:

(1) "Commission" means the Arkansas Natural Resources Commission;

(2) "Floodplain administrator" means the person designated by a city, town, or county to administer and implement this chapter and other federal and state laws and local ordinances and regulations relating to the management of flood-prone areas; and

(3) "Flood-prone areas" means areas that are subject to or are exposed to flooding and flood damage.

History. Acts 1969, No. 629, § 2; A.S.A. 1947, § 21-1902; Acts 2003, No. 745, § 1.

14-268-103. Penalty.

(a) Any person or corporation who violates any measure adopted under this chapter which prohibits the development of land by improvements that are exposed to flood damage or that are threatened by flood hazards may be fined not more than five hundred dollars ($500) for each offense.

(b) Each day during which a violation exists is a separate offense.

History. Acts 1969, No. 629, § 4; A.S.A. 1947, § 21-1904; Acts 2003, No. 745, § 2.

14-268-104. Authority to adopt measures.

CASE NOTES

Construction.

Trial court erred in granting a city summary judgment in homeowners' action alleging that the city violated state and federal regulations governing floodplain management in constructing a park near their homes because there was an issue of material fact regarding whether the city fully complied with standard engineering practice as required by City of Bryant,

Ark., Ordinance 95-31, and without such a finding, it could not be determined whether the park project was a nuisance pursuant to § 14-268-105; the homeowners presented facts that the city did not provide any type of hydrologic and hydraulic analyses prior to initiating the new construction of the park as required by Ordinance 95-31, and there was conflicting evidence as to whether the city was required to submit a conditional letter of map revision. Hall v. City of Bryant, 2010 Ark. App. 787, — S.W.3d — (2010).

14-268-105. Public nuisance — Injunction or abatement.

CASE NOTES

Analysis

Construction.
Remedies.

Construction.

City's construction of a sewage treatment at a site regulated by the ordinances of the neighboring town constituted a public nuisance as a matter of law, as defined in this section, and the city's power of eminent domain argument was waived. City of Dover v. City of Russellville, 363 Ark. 458, 215 S.W.3d 623 (2005).

Trial court erred in granting a city summary judgment in homeowners' action alleging that the city violated state and federal regulations governing floodplain management in constructing a park near their homes because there was an issue of material fact regarding whether the city fully complied with standard engineering practice as required by City of Bryant, Ark., Ordinance 95-31, and without such a finding, it could not be determined whether the park project was a nuisance pursuant to this section; the homeowners presented facts that the city did not provide any type of hydrologic and hydraulic analyses prior to initiating the new construction of the park as required by Ordinance 95-31, and there was conflicting evidence as to whether the city was required to submit a conditional letter of map revision. Hall v. City of Bryant, 2010 Ark. App. 787, — S.W.3d — (2010).

Remedies.

Aggrieved party was not required to exhaust his administrative remedies prior to seeking injunctive relief; a party was permitted to enjoin a public nuisance, without directing that any other steps be taken prior to requesting such relief. Hurst v. Holland, 347 Ark. 235, 61 S.W.3d 180 (2001).

Based on the plain language of this section, homeowners' lack of proof of damages was not dispositive to their claim for injunctive relief based on nuisance against a city; the statute does not require that the citizen present proof of damages or irreparable harm in order to obtain injunctive relief. Hall v. City of Bryant, 2010 Ark. App. 787, — S.W.3d — (2010).

14-268-106. Floodplain administrator.

(a) Each county, city, or town ordinance adopted under this chapter shall designate a person to serve as the floodplain administrator to administer and implement the ordinance and any local codes and regulations relating to the management of flood-prone areas.

(b) Beginning July 1, 2004, each floodplain administrator shall become accredited by the Arkansas Natural Resources Commission under the commission's authority regarding flood control under §§ 15-24-102 and 15-24-109.

History. Acts 2003, No. 745, § 3.

CHAPTER 269

PARKS AND RECREATIONAL FACILITIES

SUBCHAPTER.

Subchapter 1 — Acquisition, Construction, and Maintenance of Recreational Facilities

14-269-103. General authority — Agreements with federal agencies — Condemnation proceedings.

CASE NOTES

Condemnation Proceedings.

City was authorized to enter into a lease agreement with an individual, firm, or corporation to operate a property dedicated to public use and on which the lessee was planning to put a presidential library, park, and complex, as such uses were "necessary or desirable" under this section. Pfeifer v. City of Little Rock, 346 Ark. 449, 57 S.W.3d 714 (2001).

City was authorized to institute condemnation proceedings to obtain land for public use pursuant to subsection (d)(1) as negotiation with the property owner to acquire the necessary land on which would be built a presidential library, park, and complex was not successful. Pfeifer v. City of Little Rock, 346 Ark. 449, 57 S.W.3d 714 (2001).

Subchapter 3 — Operation and Management of Parks and Recreation Programs

SECTION.

14-269-302. Commission — Creation — Members.

(a)(1) Any city of the first class or city of the second class desiring to avail itself of the benefits of this subchapter, by a majority vote of the elected and qualified members of the city council, may enact an ordinance creating a parks and recreation commission to be composed of no fewer than five (5) nor more than fifteen (15) citizens who are qualified electors of the municipality and, by affirmative vote of three-fourths (¾) of the elected and qualified members of the city council, may repeal the ordinance creating the commission.

(2) The city council of any city of the first class or city of the second class may increase the membership of its parks and recreation commission to no more than fifteen (15) members under subsection (e) of this section if the city council determines that an enlarged commission could better serve the city's parks and recreation program.

(b)(1)(A) The commissioners:

(i) Shall be appointed by the mayor;

(ii) Shall be confirmed by a majority vote of the duly elected and qualified members of the city council; and

(iii) Shall hold office for a term of five (5) years.

(B)(i) However, the first commissioners to be appointed and confirmed shall serve for terms of one (1) year, two (2) years, three (3) years, four (4) years, and five (5) years, respectively, to be designated by the mayor and city council.

(ii) Thereafter, upon the expiration of their respective terms, commissioners appointed by the mayor and approved by a majority vote of the city council shall each be appointed for a term of five (5) years.

(2) The commissioners may be reappointed.

(c)(1) In the event of a vacancy occurring on the commission, it shall be filled by appointment by the mayor, subject to the approval of a majority vote of the duly elected and qualified members of the city council.

(2) A vacancy shall be filled for the remainder of the term.

(d) Each commissioner shall file the oath required of public officials in the State of Arkansas.

(e)(1) In the event the city council of any city votes to increase the membership of its parks and recreation commission under subdivision (a)(2) of this section, then the additional members of the commission shall be appointed in the manner provided in subsection (b) of this section and shall serve terms as provided in subdivision (e)(4) of this section.

(2) Their successors shall be appointed for five-year terms.

(3) The members shall qualify in the same manner as provided in subsection (a) of this section for other commission members, and vacancies in either of the additional member positions shall be filled in the manner provided in subsection (c) of this section.

(4) Upon increasing the number of members of the commission, the existing and additional commissioners shall serve initial terms as follows:

(A) For commissions of six (6) members, the initial terms shall be:

(i) One (1) member with a term of one (1) year;

(ii) One (1) member with a term of two (2) years;

(iii) One (1) member with a term of three (3) years;

(iv) One (1) member with a term of four (4) years; and

(v) Two (2) members with terms of five (5) years;

(B) For commissions of seven (7) members, the initial terms shall be:

(i) One (1) member with a term of one (1) year;

(ii) One (1) member with a term of two (2) years

(iii) One member with a term of three (3) years;

(iv) Two (2) members with terms of four (4) years; and

(v) Two (2) members with terms of five (5) years;

(C) For commissions of eight (8) members, the initial terms shall be:

(i) One (1) member with a term of one (1) year;

(ii) One (1) member with a term of two (2) years;

(iii) Two (2) members with terms of three (3) years;
(iv) Two (2) members with terms of four (4) years; and
(v) Two (2) members with terms of five (5) years;
(D) For commissions of nine (9) members, the initial terms shall be:
(i) One (1) member with a term of (1) year;
(ii) Two (2) members with terms of two (2) years;
(iii) Two (2) members with terms of three (3) years;
(iv) Two (2) members with terms of four (4) years; and
(v) Two (2) members with terms of five (5) years;
(E) For commissions of ten (10) members, the initial terms shall be:
(i) Two (2) members with terms of one (1) year;
(ii) Two (2) members with terms of two (2) years;
(iii) Two (2) members with terms of three (3) years;
(iv) Two (2) members with terms of four (4) years; and
(v) Two (2) members with terms of five (5) years;
(F) For commissions of eleven (11) members, the initial terms shall be:
(i) Two (2) members with terms of one (1) year;
(ii) Two (2) members with terms of two (2) years;
(iii) Two (2) members with terms of (3) years;
(iv) Two (2) members with terms of (4) years; and
(v) Three (3) members with terms of five (5) years;
(G) For commissions of twelve (12) members, the initial terms shall be:
(i) Two (2) members with terms of one (1) year;
(ii) Two (2) members with terms of two (2) years;
(iii) Two (2) members with terms of three (3) years;
(iv) Three (3) members with terms of four (4) years; and
(v) Three (3) members with terms of five (5) years;
(H) For commissions of thirteen (13) members, the initial terms shall be:
(i) Two (2) members with terms of one (1) year;
(ii) Two (2) members with terms of two (2) years;
(iii) Three (3) members with terms of three (3) years;
(iv) Three (3) members with terms of four (4) years; and
(v) Three (3) members with terms of five (5) years;
(I) For commissions of fourteen (14) members, the initial terms shall be:
(i) Two (2) members with terms of (1) year;
(ii) Three (3) members with terms of two (2) years;
(iii) Three (3) members with terms of three (3) years;
(iv) Three (3) members with terms of four (4) years; and
(v) Three (3) members with terms of five (5) years; and
(J) For commissions of fifteen (15) members, the initial terms shall be:
(i) Three (3) members with terms of one (1) year;

(ii) Three (3) members with terms of two (2) years;
(iii) Three (3) members with terms of three (3) years;
(iv) Three (3) members with terms of four (4) years; and
(v) Three (3) members with terms of five (5) years.

(f) Upon the appointment of the commissioners as provided in this section, the mayor and city council shall execute such instruments and enact such measures as may be necessary to vest complete charge of the municipally owned parks and recreation facilities in the commissioners.

(g) Any commissioner appointed by the provisions of this section may be removed for cause upon a two-thirds (⅔) vote of the elected and qualified members of the city council.

History. Acts 1949, No. 471, §§ 2-4, 13; 1979, No. 102, §§ 1, 2; A.S.A. 1947, §§ 19-3619 — 19-3621, 19-3630; Acts 2003, No. 294, § 1.

CHAPTER 271

UNDERGROUND FACILITIES DAMAGE PREVENTION

Effective Dates. Acts 2007, No. 41, § 6[7]: Jan. 1, 2008.

14-271-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) Approximate location of underground facilities means a strip of land at least three feet (3') wide but not wider than the width of the facility plus one and one-half feet (1½') on either side of the facility;

(2) "Damage" includes the substantial weakening of structural or lateral support of underground facilities, the penetration or destruction of any protective coating, housing, or other protective device of underground facilities, the partial or complete severance of an underground facility, and the rendering of any underground facility inaccessible;

(3) "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any powered tools, powered equipment, exclusive of transportation equipment, or discharge explosives;

(4) "Excavate" or "excavation" means to dig, compress, or remove earth, rock, or other materials in or on the ground by use of mechanized equipment or blasting, including, but not necessarily limited to, augering, boring, backfilling, drilling, grading, pile-driving, plowing in, pulling in, trenching, tunneling, and plowing;

(5) "Mechanized equipment" means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing in or pulling in cable or pipe;

(6) "Member operator" means any operator that is a member of the Arkansas One Call Center;

(7) "One Call Center" means a center operated by an organization which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators and to disseminate such notification of planned excavation or demolition to operators who are members of the center;

(8) "Operator" means any person that owns or operates an underground facility;

(9) "Person" means any individual, any corporation, partnership, association, improvement district, property owners association, property developer, public agency, or any other entity organized under the laws of any state or any subdivision or instrumentality of a state, and any employee, agent, or legal representative thereof;

(10) "Preengineered project" means a public project wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a formal meeting prior to the commencement of any construction work on the project in which all persons determined by the public agency to have underground facilities located within the construction area of the project are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and wherein the location of all known underground facilities are located or noted on the engineering drawing and specifications for the project;

(11) "Public agency" means the state or any board, commission, or agency of the state and any city, town, county, subdivision thereof, or other governmental entity;

(12) "Right-of-way" means any area along which an underground facility is located;

(13)(A) "Underground facility" means any line, system, and appurtenance or facility that is:

(i) Located beneath the ground surface or beneath structures, streets, roads, alleys, sidewalks, or other public rights-of-way; and

(ii) Used for producing, storing, conveying, transmitting, or distributing communications, data, electricity, gas, heat, water, steam, chemicals, television or radio transmissions or signals, or sewage.

(B) "Underground facility" does not include:

(i) Privately owned service lines:

(a) Used solely for the purpose of transporting communications, data, electricity, gas, heat, water, steam, chemicals, television or radio transmissions or signals, or sewage for the operation of a residence or business; and

(b) Wholly located on or beneath private property; or

(ii) Residential or agricultural underground irrigation systems;

(14) "Underground pipeline facilities" means any underground pipeline facility used to transport natural gas or hazardous liquids. However, this definition does not apply to persons, including operator's master meters, whose primary activity does not include the production, transportation, or marketing of gas or hazardous liquids or to master-metered systems whose underground facilities do not cross property other than their own or are not located under public rights-of-way; and

(15) "Working day" means every day, except Saturday, Sunday, and national and legal state holidays.

History. Acts 1987, No. 600, § 2; 1989, No. 370, §§ 1, 5; 1991, No. 762, §§ 2, 3; 1995, No. 727, §§ 1, 6; 2007, No. 41, §§ 1–3.

Amendments. The 2007 amendment, in (8), substituted "person that" for "public utility as defined in § 23-1-101 which" and deleted "all municipally owned or operated water, sewer, or electric utilities; any gas utility, however owned or operated; all master meter operators whose underground facilities cross property other than their own or under public rights-of-way; and any other water or sewer utilities, owned or operated individually or by property owners' associations, improvement districts, or property developers, serving in excess of one hundred (100) customers" following "underground facility"; inserted "improvement district, property owners association, property developer, public agency" in (9); and rewrote (13)(A) and (B).

Effective Dates. Acts 2007, No. 41, § 6[7], provided: "This act is effective on January 1, 2008."

14-271-109. Notice to One Call Center — Exceptions.

(a) Compliance with notice requirements of § 14-271-112 is not required for:

(1) The moving of earth by tools manipulated only by human or animal power;

(2) Any form of cultivation for agricultural purposes, digging for postholes on private property, farm ponds, land clearing, or other normal agricultural purposes which are not on a right-of-way of an operator;

(3) Work by a public agency or its contractors on a preengineered project;

(4) The opening of a grave in a cemetery; or

(5) Routine road work and general maintenance as performed in the right-of-way by state or county maintenance departments, but excluding any work or maintenance involving change of grade or clearing or widening drainage ditches.

(b)(1) Compliance with notice requirements of § 14-271-112 is not required of persons responsible for repair or restoration of service, or to ameliorate an imminent danger to life, health, property, or public safety.

(2) However, those persons shall give, as soon as practicable, oral notice of the emergency excavation or demolition to the One Call Center and request emergency assistance from the One Call Center in locating and providing immediate protection to its underground facilities.

(3) An imminent danger to life, health, property, or public safety exists whenever there is a substantial likelihood that loss of life, health,

or property will result before the procedures under § 14-271-112 can be fully complied with.

History. Acts 1987, No. 600, §§ 3, 10; 1989, No. 370, § 4; 1991, No. 762, § 7; 1995, No. 727, § 5; 2007, No. 41, § 4.

Amendments. The 2007 amendment, in (b)(2), in the first sentence, deleted "either" following "demolition to," deleted "or to each operator having underground facilities located in the area where the excavation or demolition is to be performed" following first occurrence of "One Call Center," substituted "from the One Call Center" for "from each operator so identified", and deleted the former last sentence.

Effective Dates. Acts 2007, No. 41, § 6[7], provided: "This act is effective on January 1, 2008."

14-271-110. Notifying operators of underground facilities — Identification of location.

(a)(1) Within four (4) working hours after receiving notification of intent to excavate or demolish, the One Call Center shall in turn notify all member operators of underground facilities in the affected area of the proposed activity.

(2)(A) Unless otherwise agreed to between the excavators and the operator, within two (2) working days after notification from the One Call Center, the operator shall identify the approximate location of the facilities by field-marking on the surface by paint, dye, stakes, or any other clearly visible marking which designates the horizontal course of the facilities.

(B) If the operator has no facilities in the area, the operator shall so inform the person proposing the activity, either by contacting that person or by leaving such information at the site.

(3) When an underground facility is being located, the operator shall furnish the excavator information which identifies the approximate center line, approximate or estimated depth, when known, and dimensions of the underground facility.

(4)(A) When excavating within the approximate location of an underground facility, the excavator shall uncover the facility using a method approved by the operator.

(B) No power-driven tools or equipment shall be used without the express approval of the operator.

(b) Subject to the provisions of § 14-271-112(b) governing the duration of a locate request, when projects are delayed or are lengthy in time and location, the operator and the excavator shall establish and maintain coordination regarding location, marking, and identification of the facilities until all excavation or demolition is completed.

History. Acts 1987, No. 600, § 9; 1995, No. 727, § 6; 2007, No. 41, § 5.

Amendments. The 2007 amendment substituted "the One Call Center" for "either the One Call Center or the person proposing the activity" in (a)(2)(A).

Effective Dates. Acts 2007, No. 41, § 6[7], provided: "This act is effective on January 1, 2008."

14-271-112. Notice of intent to excavate or demolish.

CASE NOTES

Damages.

Trial court properly rejected evidence offered by a phone company regarding what it would have cost to rent replacement lines while lines damaged by a contractor, who dug in an area without providing notice to the phone company as required by this section were repaired; evidence was irrelevant because loss of use damages were recoverable in an action for damage to personal property only in cases involving motor vehicles. Southwestern Bell Tel. Co. v. Harris Co., 353 Ark. 487, 109 S.W.3d 637 (2003).

CHAPTER 272

RURAL FIRE DEPARTMENTS

SUBCHAPTER.

Subchapter 1 — Rural Fire Departments Study Commission

SECTION.

14-272-101. Creation.

(a) There is hereby created the Rural Fire Departments Study Committee to be composed of:

(1) Two (2) members of the House Committee on Insurance and Commerce to be appointed by the chair of the committee;

(2) One (1) member of the Senate Committee on Insurance and Commerce to be appointed by the chair of the committee;

(3) One (1) member of the House Committee on Agriculture, Forestry, and Economic Development to be appointed by the chair of the committee;

(4) One (1) member of the Senate Committee on Agriculture, Forestry, and Economic Development to be appointed by the chair of the committee;

(5) One (1) member of the House Committee on City, County, and Local Affairs to be appointed by the chair of the committee;

(6) One (1) member of the Senate Committee on City, County, and Local Affairs to be appointed by the chair of the committee;

(7) Three (3) members of the House of Representatives to be appointed by the Speaker of the House of Representatives; and

(8) Three (3) members of the Senate to be appointed by the President Pro Tempore of the Senate.

(b)(1) The following shall be nonvoting ex officio members of the committee:

(A) One (1) member representing the Arkansas Farm Bureau Federation to be recommended by the Arkansas Farm Bureau Federation and appointed by the Speaker of the House of Representatives;

(B) One (1) member representing the Independent Insurance Agents of Arkansas to be recommended by the Independent Insurance Agents of Arkansas and appointed by the Speaker of the House of Representatives;

(C) One (1) member representing the County Judges Association to be recommended by the County Judges Association and appointed by the Speaker of the House of Representatives;

(D) One (1) member representing the Arkansas Rural Fire Fighters Association to be recommended by the Arkansas Rural Fire Fighters Association and appointed by the Speaker of the House of Representatives;

(E) One (1) member representing the Arkansas Council of Professional Fire Fighters to be recommended by the Arkansas Council of Professional Fire Fighters and appointed by the Speaker of the House of Representatives;

(F) One (1) member representing the Arkansas Municipal League to be recommended by the Arkansas Municipal League and appointed by the Speaker of the House of Representatives;

(G) One (1) member appointed by the Speaker of the House of Representatives to represent the Arkansas State Firefighters' Association;

(H) The Director of the Arkansas Forestry Commission or the director's designee;

(I) The Director of the Department of Rural Services or the director's designee; and

(J) The Manager of the Rural Fire Protection Program of the Arkansas Association of Resource Conservation and Development Councils.

(2) If an ex officio nonvoting member no longer represents the organization from which he or she was selected, a vacancy shall exist and the vacancy shall be filled in the same manner as the original appointment.

(c) The Speaker of the House of Representatives shall select one (1) of the Representatives as a cochair, and the President Pro Tempore of the Senate shall select one (1) of the Senators as a cochair.

(d)(1) A member of the committee shall continue to serve on the committee until he or she no longer wishes to serve or no longer qualifies to represent or no longer is a member of the committee, body, or organization which he or she was appointed to represent.

(2) Any vacancy on the committee shall be filled by the original appointing authority with another qualifying member of the committee, body, or organization.

History. Acts 1991, No. 1032, § 1; 1993, No. 231, § 1; 1995, No. 489, § 1; 1997, No. 183, § 1; 1997, No. 385, § 2; 1997, No. 1264, § 1; 2001, No. 165, § 1; 2003, No. 198, § 1.

14-272-102. Members — Compensation.

(a) Members of the Rural Fire Departments Study Committee, other than the legislative members, shall serve without compensation but may be reimbursed for expenses and travel in the maximum amounts prescribed by the Department of Finance and Administration for state employees.

(b)(1) Legislative members of the committee shall be entitled to per diem and mileage at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly.

(2) Legislative members of the committee may receive payment for per diem and mileage from appropriated funds for the interim committees which they represent, for the interim committees on which they serve, or from appropriated funds for travel and expenses for the house of the General Assembly in which they serve.

History. Acts 1991, No. 1032, § 2; 1993, No. 231, § 2; 1997, No. 250, § 90; 1997, No. 1264, § 2; 1997, No. 1354, § 31.

A.C.R.C. Notes. Section 14-272-102 is set out to correct the name of the Rural Fire Departments Study Committee from the Rural Fire Departments Study Commission. Acts 1997, No. 1264 effected the change in name.

14-272-104. Biennial reports.

The Rural Fire Departments Study Committee on or before September 1 of each even-numbered year shall submit a biennial report and its recommendations for any proposed legislation to the:

(1) House Committee on Insurance and Commerce;

(2) Senate Committee on Insurance and Commerce;

(3) House Committee on City, County, and Local Affairs;

(4) Senate Committee on City, County, and Local Affairs; and

(5) House Committee on Agriculture, Forestry, and Economic Development.

History. Acts 1993, No. 231, § 3; 1997, No. 183, § 2; 1997, No. 385, § 3; 1997, No. 1264, § 4.

A.C.R.C. Notes. Section 14-272-104 has been renumbered to conform to standard Code style and also to change the name of the House Interim Committee on Agriculture and Economic Development and the Senate Interim Committee on Agriculture and Economic Development to the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development in accordance with the amendment of § 10-3-203(3)(A)(vi) by Acts 2001, No. 960, § 1.

Subchapter 2 — Study of Rural Fire Departments and Their ISO Ratings

SECTION.
14-272-201, 14-272-202. [Repealed.]

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

14-272-201, 14-272-202. [Repealed.]

Publisher's Notes. This subchapter, concerning the study of rural fire departments and their ISO ratings, was repealed by Acts 2003, No. 1473, § 30. The subchapter was derived from the following sources:

14-272-201. Acts 1999, No. 1507, § 1.
14-272-202. Acts 1999, No. 1507, § 2.

Subchapter 3 — Fire Department Services Agreements

SECTION.
14-272-301. Definitions.
14-272-302. Services agreements, authority, pledge, and assignment.
14-272-303. Firefighting services entitlement.
14-272-304. Payment of service availability fees.

A.C.R.C. Notes. Acts 2001, No. 1725, § 1, provided: "Legislative intent.

"(a) The General Assembly of the State of Arkansas does hereby recognize that: (1) Rural fire departments and other firefighting organizations and entities across the State of Arkansas do not possess proper and adequate firefighting equipment necessary to protect the health, safety and welfare of the citizens of the State of Arkansas; and (2) The State of Arkansas has no mechanism pursuant to which rural fire departments and other firefighting organizations and entities can generate reliable reoccurring revenue that can be used to fund the purchase of necessary firefighting equipment; and (3) The absence of necessary firefighting equipment has resulted in the loss of life, the loss of property and the assessment of excessive insurance ratings and premium costs that burden residents of rural portions of the State of Arkansas.

"(b) In remedying the foregoing, it is the intent of the General Assembly to provide a means by which volunteer, not-for-profit and other fire departments can develop a reoccurring revenue source which can be pledged to lenders and third parties as security for the repayment of loan proceeds used by fire departments to acquire fire trucks, equipment and related appurtenances."

Acts 2001, No. 1725, § 6, provided: "Provisions supplemental. The provisions of this act supersede all other provisions of the Arkansas Code which are in express contradiction hereof. To the extent that no

express contradictions exist, then the powers and authority granted by this act supplement all other powers and authority otherwise granted to fire departments under the laws of the State of Arkansas."

14-272-301. Definitions.

As used in this subchapter, unless the context clearly expresses otherwise:

(1) "Beneficiaries" means those persons or entities who have executed services agreements and who have paid and remain current in the payment of services availability fees to a fire department or fire departments that are recognized as providing firefighting services to the beneficiaries' property;

(2) "Fire department" means any fire protection district, improvement district, subordinate service district, other governmental entity or volunteer, not-for-profit, rural, or other organization, or entity of any nature that is involved in the provision of firefighting services;

(3) "Firefighting equipment" means all equipment, vehicles, improvements, and other real and personal property of every nature that might be used by a fire department in connection with the supplying of firefighting services, specifically including, without limitation, all fire trucks, lines, hoses, pumps, ladders, fire houses, office facilities, storage facilities, and other improvements of every nature;

(4) "Firefighting services" means the provision of all services of whatever nature which might be utilized in connection with the extinguishing of fires and the preservation of life and real and personal property;

(5) "Lenders" means those parties who extend funds or credit to fire departments for the purpose of acquiring, upgrading, leasing, accessing, or otherwise gaining the use and enjoyment of firefighting equipment, specifically including, without limitation, banks, savings associations, commercial lenders, indenture trustees, other lenders, or other parties of whatever nature who extend credit or financing to others;

(6) "Nonbeneficiaries" means those persons or entities who have not executed a services agreement or who have not paid or are not current in the payment of services availability fees to a fire department or fire departments recognized as being capable of providing firefighting services to the property of the nonbeneficiaries;

(7) "Services agreement" means a written agreement between a fire department and a beneficiary which shall address the following:

(A) That period of time during which the services agreement shall be effective;

(B) Provisions for the renewal of the services agreement for successive terms;

(C) The dollar amount of that services availability fee which the beneficiary shall pay annually to the fire department in consideration for the provision by the fire department to the beneficiary of firefight-

ing services, along with any provisions that the fire department may specify which allow for the installment payment of the annual services availability fee;

(D) The manner in which the fire department might increase the services availability fee during the term of the services agreement;

(E) An explanation of the nature and extent of the firefighting services which are offered by the fire department; and

(F) Such other information as the fire department might specify and determine from time to time; and

(8) "Services availability fee" means the annual fee that is charged by fire departments to beneficiaries in consideration for the provision of firefighting services, with it being understood that the fire department may set varying services availability fees dependent upon the square footage of real property improvements, property type and usage, or other criteria identified by the fire department.

History. Acts 2001, No. 1725, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

14-272-302. Services agreements, authority, pledge, and assignment.

(a) Any fire department may enter into services agreements with its beneficiaries.

(b)(1) Fire departments are authorized and empowered to enter into loans, lease-purchase agreements, and other extensions of credit from lenders and are empowered to pledge and assign services agreements to lenders in order to collateralize and secure repayment of loans, lease-purchase agreements, and other extensions of credit that might be advanced by lenders to fire departments for the purpose of acquiring, improving, accessing, or otherwise gaining the use of fire equipment.

(2)(A) Fire departments may additionally grant to lenders all mortgages, security interests, and other liens to secure and collateralize repayment of credit extended by lenders to fire departments.

(B) Notwithstanding any other applicable statute, rule, or regulation, the pledging and collateral assignment of services agreements, the encumbering of all other fire department assets, and the execution of all other debt-evidencing and debt-securing documents shall occur by means of a resolution which is duly adopted by the governing board or body of the fire department.

History. Acts 2001, No. 1725, § 3.

14-272-303. Firefighting services entitlement.

(a) Beneficiaries shall be entitled to receive all firefighting services specified in the services agreement.

(b)(1) Should a fire department provide firefighting services to a nonbeneficiary, then the nonbeneficiary shall pay to the fire department a sum not to exceed five thousand dollars ($5,000) as consideration for the provision of firefighting services, with its being understood that the exact amount of the sum shall be specified by written resolution of the fire department in the services agreement.

(2) If any nonbeneficiary owing such a debt to a fire department fails to pay the debt in full within thirty (30) days after receipt of a written request for payment delivered by certified mail from the fire department, the fire department may initiate litigation against that nonbeneficiary to collect the amount owed to the fire department.

History. Acts 2001, No. 1725, § 4.

14-272-304. Payment of service availability fees.

(a) A fire department shall adopt written procedures pursuant to which the department's service availability fees shall be paid.

(b) If not paid within thirty (30) days after a due date, then a fire department shall have the right to initiate collection litigation against a delinquent beneficiary and shall have the right to receive a judgment in the amount of the delinquent service availability fee, plus all reasonable costs and fees.

(c) A fire department shall have the right to contract with third parties for the provision of accounting, invoicing, servicing, and related and unrelated services associated with the assessment, collection, and administration of service availability fees.

History. Acts 2001, No. 1725, § 5.

SUBTITLE 17. PUBLIC HEALTH AND WELFARE IMPROVEMENT DISTRICTS

CHAPTER 282

AMBULANCE SERVICE IMPROVEMENT DISTRICTS

14-282-102. Petition for improvement district.

CASE NOTES

Taxation.

The intent of the legislature in adopting an alternative means of forming an ambulance service district by the vote of all eligible voters in the district, as prescribed by subsection (e), allows for the imposition of taxes upon both real and personal property. W. Carroll County Ambulance Dist. v. Johnson, 345 Ark. 95, 44 S.W.3d 284 (2001).

CHAPTER 283

MOSQUITO ABATEMENT DISTRICTS

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-283-101. Petition for special election.

(a) When petitions are filed with the county court of any county containing the signatures of ten percent (10%) or more of the qualified electors of all or any defined part of any county or all or any defined part of any city, as determined by the number of votes cast by the qualified electors of the county, city, or designated portion thereof, for all candidates for Governor at the last preceding general election, requesting the establishment of a mosquito abatement district in the county or a designated portion of the county or in the city or designated portion of the city and requesting that assessed benefits be made on the property located in the district to finance the operation of the district, the county court shall call a special election in accordance with § 7-11-201 et seq. in the county, city, or designated area of the city to determine whether a mosquito abatement district shall be established for the area.

(b) Petitions filed pursuant to subsection (a) of this section shall specifically define the area proposed to be included in a mosquito abatement district and shall specify the maximum assessed benefits or taxes which may be levied against property within the district for the support of the district. In no event shall the assessed benefits in any district exceed an amount equal to one percent (1%) of the assessed valuation of real property in the district.

(c) The quorum court of the county may on its own motion enact an ordinance directing the county court to call a special election in accordance with § 7-11-201 et seq. in the county, city, or designated

area of the city to determine whether a mosquito abatement district shall be established for the area.

History. Acts 1979, No. 530, §§ 1, 2; A.S.A. 1947, §§ 82-1201, 82-1202; Acts 1989, No. 661, § 1; 2007, No. 1049, § 73; 2009, No. 1480, § 92.

Amendments. The 2007 amendment inserted "in accordance with § 7-5-103(b)" in (a) and (c).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a) and (c).

14-283-102. Procedures for special elections.

(a) The special election called by the county court to submit the question of the establishment and financing of a mosquito abatement district to the electors of the proposed district shall be held in accordance with § 7-11-201 et seq. within ninety (90) days after the proclamation calling the election.

(b) At the election, the question of establishing and financing the district shall be placed on the ballot in substantially the following form:

"FOR the establishment of a mosquito abatement district in .... (county), ... (city), ... (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed ten percent (10%) of the assessed valuation of real property in the district, to finance the district ..... ☐

AGAINST the establishment of a mosquito abatement district in .... (county), ... (city), ... (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed ten percent (10%) of the assessed valuation of real property in the district to finance the district ..... ☐."

History. Acts 1979, No. 530, § 3; A.S.A. 1947, § 82-1203; Acts 2005, No. 2145, § 52; 2007, No. 1049, § 74; 2009, No. 1480, § 93.

Amendments. The 2007 amendment rewrote (a).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

CHAPTER 284

FIRE PROTECTION DISTRICTS

SUBCHAPTER.

1. General Provisions.
2. Fire Protection Districts Outside of Cities and Towns.
3. Rural Fire Protection Service.
4. Insurance Premium Taxes.

A.C.R.C. Notes. References to "this chapter" in §§ 14-284-101 to 14-284-124 and subchapters 2 and 3 may not apply to § 14-284-125 and subchapter 4 which were enacted subsequently.

SUBCHAPTER 1 — GENERAL PROVISIONS

14-284-109. Assessment — Notice and hearing.

(a) The assessment shall be filed with the county clerk of the county, and the secretary of the board shall give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county. This notice may be in the following form:

"Notice is hereby given that the assessment of annual benefits of ..... District Number ..... has been filed in the office of the County Clerk of ..... County, where it is open for inspection. All persons wishing to be heard on said assessment will be heard by the assessors of said district in the office of the county clerk between the hours of 1 P.M. and 4 P.M., at ....., on the ..... day of ....., 19...."

(b) On the day named by the notice, it shall be the duty of the assessors to meet at the place named as a board of assessors and to hear all complaints against the assessment and to equalize and adjust the assessment. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it.

If the board is unable to hear all complaints between the hours designated, they shall adjourn over from day to day until all parties have been heard.

(c)(1) However, in cities of the first class that have two (2) or more full-time volunteer fire protection districts, the assessment is not final until reviewed by the governing body of the city and a resolution is passed that states the assessments have been reviewed.

(2) The city's governing body may return the assessments to the assessors with a request for further review of the assessments by the assessors.

History. Acts 1939, No. 183, § 5; A.S.A. 1947, § 20-905; Acts 2003, No. 1168, § 1.

14-284-116. Awarding of contracts.

(a)(1) All contractors shall be required to give bond for the faithful performance of contracts as may be awarded them, with good and sufficient sureties in an amount to be fixed by the board of commissioners.

(2) The board shall not remit or excuse the:

(A) Penalty or forfeiture of the bond; or

(B) Breaches of the bond.

(b)(1) The board may appoint all necessary agents for carrying on the work and may fix their pay.

(2) The board shall pay a reasonable fee for legal services in organizing the district.

(c)(1) The board may sell all unnecessary material and implements that may be on hand and which may not be necessary for the completion of the improvement under way or for its operation.

(2) The board may in general make all contracts in the conduct of the affairs of the district as may best serve the public interest.

(d)(1) The board shall make no contract for the purchase of material or equipment costing ten thousand dollars ($10,000) or more except upon sealed bids opened in public.

(2) It shall be the duty of the secretary of the district to deliver a news item notice of intention to receive bids on certain equipment to the daily papers in the county and at least one (1) weekly paper.

History. Acts 1939, No. 183, § 11; A.S.A. 1947, § 20-911; Acts 1992 (1st Ex. Sess.), No. 10, § 2; 2005, No. 1224, § 1; 2007, No. 61, § 1.

Amendments. The 2007 amendment substituted "ten thousand dollars ($10,000)" for "one thousand dollars ($1,000)" in (d)(1).

14-284-117. Issuance of notes.

(a)(1) In order to acquire equipment and to do the work, the board of commissioners may issue the negotiable notes of the fire protection district signed by the members of the board and bearing a rate of interest not exceeding eight percent (8%) per annum, and it may pledge and mortgage a portion of the future annual benefit assessments as collected for the payment thereof.

(2) The petition for the creation of a district in the court order creating the district shall limit the total amount of notes that may be outstanding at any time, but the limits may be increased to the maximum prescribed in this section by a vote of a majority in value of the owners of real property in the district.

(3) No district created under this section shall have notes outstanding at any one time in excess of one hundred fifty thousand ($150,000).

(b) The district shall have no authority to issue bonds.

History. Acts 1939, No. 183, § 12; 1975, No. 979, § 1; A.S.A. 1947, § 20-912; Acts 2009, No. 399, § 1.

Amendments. The 2009 amendment in (a)(1) inserted "of commissioners" and "fire protection"; and substituted "one hundred fifty thousand ($150,000)" for "fifty thousand dollars ($50,000)" in (a)(3), and made minor stylistic changes.

14-284-124. Consolidation — Conditions and procedures.

(a)(1) Fire protection districts organized under this subchapter may consolidate if:

(A) The districts are geographically contiguous;

(B) Located in the same county; and

(C) No parcel of land in the new district will be more than three (3) miles from an existing fire station.

(2)(A) Consolidation of fire protection districts may be initiated upon the adoption of a resolution for consolidation by the board of directors of each district.

(B)(i) Upon adopting a resolution, each fire protection district shall hold a public hearing to be held in the district no sooner than twenty (20) days and no later than forty-five (45) days following the adoption of the resolution.

(ii)*(a)* Each district shall publish notice of its hearing in a newspaper of general circulation in the district once a week for two (2) consecutive weeks.

(b) The notice shall include the date, time, place, and purpose of the hearing.

(C)(i) Following the hearing, the commissioners of the district shall vote on a resolution finding that consolidation of the districts is in the best interest of the landowners of the district.

(ii) If the resolution is adopted by the board of commissioners, a copy of the resolution shall be sent to the county court in the county where the district is located.

(D)(i) Upon receiving a resolution from each district to be consolidated, the county court shall order the districts consolidated and shall name five (5) commissioners of the new district.

(ii) The new commissioners shall be appointed pursuant to § 14-284-105.

(b)(1) In cities of the first class that have two (2) or more full-time volunteer fire protection districts, the governing body of the city may refer to the voters in the fire protection districts the option to consolidate the districts.

(2) If a majority of the voters in each district vote in favor of consolidation, the districts shall consolidate as set forth in subsections (c)-(e) of this section.

(c)(1)(A) Any fire protection district which is formed by the consolidation of two (2) or more fire protection districts shall consolidate all assets held by it arising from any of the districts and shall also assume all liabilities of the districts.

(B) The assets may be used by the district for any purpose allowed by law, and the liabilities of the district may be paid with funds arising from any source.

(2) All the provisions, rights, securities, pledges, covenants, and limitations contained in the instrument creating a liability shall not be affected by the consolidation, but shall apply with the same force and effect as provided in the original creation of liability.

(d)(1) The existing assessments of each district consolidated into the new district shall remain in force until the end of the year in which the districts are consolidated.

(2) The commissioners shall order the assessors to reassess the annual benefits of the new district for the following year.

(e)(1) A consolidated fire protection district shall not have notes outstanding at any one (1) time in excess of one hundred thousand dollars ($100,000).

(2) The limitation of the excess outstanding note balance under subdivision (d)(1) of this section shall not apply to a consolidation of fire protection districts in a city of the first class that has two (2) or more full-time volunteer fire protection districts that have received funding from the city.

History. Acts 1995, No. 286, § 1; 2003, No. 1168, § 2; 2005, No. 438, § 1.

Subchapter 2 — Fire Protection Districts Outside of Cities and Towns

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Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-284-203. Methods of establishment.

Fire protection districts may be established to serve all or any defined portion of any county in any of the following ways:

(1) By ten percent (10%) of the qualified electors in the proposed district's petitioning the quorum court to hold a public hearing and to form a district, and by the quorum court's adopting an ordinance calling for notice and a public hearing within the district;

(2) By the county court pursuant to an election of the qualified electors of the proposed district initiated, called, and conducted as provided in this subchapter; or

(3) By the county court pursuant to a resolution of a suburban improvement district, approved by unanimous vote of its board of

commissioners, to convert to a fire protection district to be administered under this subchapter.

History. Acts 1979, No. 35, § 1; A.S.A. 1947, § 20-923; Acts 1997, No. 323, § 2; 2001, No. 1205, § 1.

14-284-204. Establishment by petition and adoption of ordinance.

(a)(1) If petitions containing a description of the territory for a proposed fire protection district, along with an accurate map of the proposed district boundaries, and containing the signatures of ten percent (10%) or more of the qualified electors within the proposed district are filed with the county quorum court of a county in which the proposed fire protection district is to be located, and requesting a public hearing and the establishment of a fire protection district in the county, then the county quorum court or quorum courts, if the district is located in more than one (1) county, shall conduct a public hearing to determine the support for the proposed district.

(2)(A) The quorum court shall set the time for the hearing to be held not less than thirty (30) days nor more than sixty (60) days after the petitions are certified and shall set the place for the hearing to be held within the boundaries of the proposed district.

(B) When a time and place for the hearing are set, the quorum court shall publish notice of the hearing in a newspaper of general circulation in the county.

(3)(A) Before setting the initial hearing on the adoption of an ordinance to establish a fire protection district, petitions filed with the county quorum court shall be sent to the county clerk of the county where the proposed district is to be located.

(B) It shall be the duty of the county clerk or clerks, as the case may be, to determine the sufficiency of the signatures and to certify the sufficiency in writing to the quorum court.

(C) The petitions shall indicate the elector's name, address, and signature and shall contain a verification of the signatures pursuant to § 7-9-109.

(b)(1) After the petitions are certified and the initial public hearing held, the county quorum court may adopt an ordinance to establish the district, to levy assessments on property or the landowners, or both, and to call for a public hearing on the ordinance.

(2) The ordinance shall set the time and place for a public hearing on the ordinance to be held within the boundaries of the proposed district.

(c)(1)(A) When an ordinance is adopted by the quorum court establishing a fire protection district, the quorum court shall publish notice of the adoption of the ordinance in a newspaper of general circulation in the county.

(B) The notice shall include a copy of the ordinance and shall prescribe a time and place within the proposed district for a public hearing on the ordinance.

(2)(A) A public hearing shall be held at some large public facility within the boundaries of the proposed district at least sixty (60) days and not more than ninety (90) days after the date of publication of the notice.

(B) If at the hearing a majority of the qualified electors in the proposed district appear in person to oppose the establishment of the district or if petitions opposing the establishment of the district and containing the signatures of a majority of the qualified electors in the proposed district are filed at or before the public hearing, the ordinance creating the district shall be void.

(C)(i) If a majority of the qualified electors of the proposed district do not object to the establishment of the district in person or by petition within the time prescribed in this subsection, the ordinance shall be valid and the district shall be established.

(ii) The board of commissioners for the district shall be appointed and serve, and the levy of assessed benefits to support the district may be made, in the same manner as is provided in this subchapter for fire protection districts established pursuant to a vote of the electors.

(d)(1) A fire protection district established by ordinance of the quorum court without a vote of the electors of the district shall have no authority to issue bonds and to pledge assessed benefits of the district to secure bonds, unless the question of the issuance of bonds by the district is first submitted to, and approved by, a majority of the qualified electors of the district voting on the issue.

(2) The question of the issuance of bonds by a fire protection district established by ordinance of the quorum court may be submitted to the electors of the district at an election called by the county court either at the request of the board of commissioners of the district or upon petition signed by ten percent (10%) of the electors of the district as determined by the number of votes cast by the electors of the district for all candidates for Governor at the last preceding general election.

History. Acts 1979, No. 35, § 2; A.S.A. 1947, § 20-924; Acts 2001, No. 1205, § 2.

14-284-205. Establishment by election.

(a) When petitions are filed with the county court of any county wherein the fire protection district to be established is located in a single county or if the fire protection district is to be located in more than one (1) county and the petitions are filed with the county courts of all counties wherein the fire protection district is to be established, and the petitions contain the signatures of ten percent (10%) or more of the qualified electors within the proposed fire protection district boundaries, as determined by the number of votes cast by the qualified electors within the proposed fire protection district boundaries for all candidates for Governor at the last preceding general election, requesting the establishment of a fire protection district in the county or a

designated portion thereof and requesting that assessments be made on the property or assessments be made on the landowners, or assessments be made both on the property and the landowners located in the district to finance the operation of the district, the county court, or county courts if the fire protection district is located in more than one (1) county, shall call a special election in accordance with § 7-11-201 et seq. within the proposed fire protection district to determine whether a fire protection district shall be established for the area.

(b)(1) The county court or county courts, if the proposed fire protection district is located in more than one (1) county, shall call a special election in accordance with § 7-11-201 et seq. to submit the question of the establishment and financing of a fire protection district to the electors of a proposed district.

(2) The special election shall be held within ninety (90) days after the filing of the petitions requesting the election.

(3) If the proposed fire protection district is located within more than one (1) county, the county courts shall set the date of the election on the same date and set the places of the election within the proposed fire protection district boundaries.

(4) At the election, the question of establishing and financing the district shall be placed on the ballot in substantially the following form:

"FOR the establishment of a fire protection district in .....(county), ...(designated area), and the levy of assessed benefits on real property in the district to finance the district .....☐

AGAINST the establishment of a fire protection district in .....(county), ...(designated area), and the levy of assessed benefits on real property in the district to finance the district .....☐"

History. Acts 1979, No. 35, §§ 2, 5; A.S.A. 1947, §§ 20-924, 20-927; Acts 1995, No. 766, § 1; 2005, No. 2145, § 53; 2007, No. 1049, § 75; 2009, No. 1480, § 94.

Amendments. The 2007 amendment inserted "in accordance with § 7-5-103(b)" in (a) and (b)(1); and rewrote (b)(2).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a) and (b)(1).

14-284-208. Order for establishment — Board of commissioners — Appointment — Compensation.

(a)(1) If at an election a majority of the qualified electors voting on the question vote "FOR" the establishment of the proposed fire protection district and the levy of assessed benefits to support the district or if an ordinance of the quorum court establishing a district is sustained or if the board of commissioners of a suburban improvement district votes unanimously to convert to a fire protection district, the county court shall enter an order establishing the district as described in the petitions or ordinance and shall appoint five (5) qualified electors of the district as a board of commissioners for the district, unless it is otherwise provided for by law.

(2)(A) Two (2) members of the commission shall be appointed for terms of two (2) years and three (3) members of the commission shall be appointed for terms of three (3) years.

(B) All successor members shall be appointed by the county court for terms of three (3) years.

(C) All appointments shall be subject to confirmation by the quorum court of the county.

(b) The members of the boards of commissioners of fire protection districts formed after July 3, 1989, or converted from suburban improvement districts, under this subchapter shall be elected at a public meeting called by the county court. The commissioners shall be elected by the qualified electors residing within the district.

(c) Vacancies occurring on the board because of resignation, removal, or otherwise shall be filled by the county court for the unexpired term.

(d) The members of the board shall serve without compensation but shall be entitled to actual expenses incurred in attending meetings in an amount not to exceed fifty dollars ($50.00) per month for each member of the board as authorized by the quorum court of the county.

(e) Members of the board may be removed from office by the county court for good cause shown.

(f)(1) If the district includes territory from more than one (1) county, the board of commissioners shall be composed of seven (7) members.

(2) The members of the board of commissioners of multicounty fire protection districts formed after July 3, 1995, under this subchapter shall be residents of the fire protection district and elected at a public meeting as agreed upon by the county courts in order to establish the time of the meeting and the place of the meeting being within the district. The commissioners shall be elected by the qualified electors residing within the district.

(3) The members of the board of commissioners shall serve staggered terms.

(4) Vacancies occurring on the board due to resignation, removal, or otherwise shall be filled by the remaining board members for the unexpired term.

(5)(A)(i) Members of the board may be removed by a special election to be held within ninety (90) days after the presentation of a special election removal petition signed by ten percent (10%) of the assessed landowners or the assessed per parcel or per acre owners, with the removal of the board member to be determined by the majority votes of the votes cast in person by the assessed landowners or the assessed per parcel or per acre property owners.

(ii) Each assessed landowner or assessed parcel or acre property owner shall have one (1) vote per paid assessment.

(B) The election for the removal of board members shall be held at a meeting at a designated location within the fire protection district.

History. Acts 1979, No. 35, § 6; A.S.A. 1947, § 20-928; Acts 1989, No. 648, § 1; 1991, No. 350, §§ 1, 2; 1995, No. 766, § 2; 1997, No. 323, § 3; 2005, No. 2145, § 54; 2007, No. 1049, § 76; 2009, No. 765, § 1.

Amendments. The 2007 amendment made a minor punctuation change in (f)(1) and rewrote (f)(5)(B).

The 2009 amendment inserted "or per-acre" in two places in (f)(5)(A)(i), and inserted "or acre" in (f)(5)(A)(ii).

14-284-212. Preparation of plans — Assessors and assessments generally.

(a) As soon as is practical after its establishment, the board shall prepare plans for providing fire protection services and for acquiring the property and equipment necessary to carry out the purposes of the district.

(b) They shall thereupon appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district from the providing of fire protection services and shall fix their compensation. The assessors shall take an oath that they will well and truly assess all annual benefits that will accrue to the protected landowners of the district by the providing of fire protection services.

(c) The assessors shall thereupon proceed to assess the annual benefits to the lands within the district and shall inscribe in a book each tract of land and extend opposite the inscription of each tract of land the amount of annual benefits that will accrue each year to that land by reason of the services.

(d) The original assessment of benefits and any reassessment shall be advertised and equalized in the same manner as provided in this subchapter, and owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessors, as hereinafter provided.

(e) The assessors shall place opposite each affected tract the name of the supposed owner as shown by the last county assessment, but a mistake in the name shall not void the assessment, and the assessors shall correct errors which occur in the county assessment list.

(f) The commissioners shall have the authority to fill any vacancy in the position of assessor, and the assessors shall hold office at the pleasure of the board.

(g)(1)(A) The elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter may assess a flat fee per parcel of land or per acre of land located within the district or assess a flat fee per landowner who owns land located within the district, as an alternative to assessing benefits.

(B) The elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter may establish a different flat fee for the classification of property as commercial property other than for residential property and a different flat fee for the classification of property as unimproved property.

(C) The elected board of commissioners may determine if a parcel of property or acre is to be classified as commercial, residential, or unimproved property.

(D) If the elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter assesses the

flat fee per landowner and also establishes different flat fee classifications per parcel or per acre, and if a landowner owns more than one (1) parcel or one (1) acre of property within the fire district with different flat fee classifications, the landowner is to be annually assessed one (1) time the highest flat fee classification assessment.

(2)(A) If the elected board of commissioners of a fire protection district formed after July 3, 1995, under this subchapter assesses an increase in the flat fee per parcel or per acre classification or an increase in the assessment per landowner or an increase in the assessment for both parcel or acre classification and landowner, the increased assessment must be approved in an election by a majority vote of the votes cast in person by the assessed landowners or the assessed per parcel or per acre property owners.

(B) The election called by the elected board of commissioners for an increase in the flat fee assessment shall be held within ninety (90) days after the board of commissioners' meeting that approves the assessment increase.

(C) Notice of the election must be published at least three (3) times by insertion in a newspaper of general circulation within the fire protection district and by a public notice posted at the fire stations within the fire protection district.

(D) The election for the assessment increase shall be held at a designated location within the fire protection district.

(E) Each assessed landowner or assessed parcel or acre property owner shall have one (1) vote per paid assessment.

History. Acts 1979, No. 35, § 10; A.S.A. 1947, § 20-932; Acts 1989, No. 648, § 2; 1995, No. 766, § 3; 2009, No. 765, § 2.

Amendments. The 2009 amendment inserted "or per acre of land" and inserted "as an alternative to assessing benefits" in (g)(1)(A), inserted "or acre" in (g)(1)(C), (g)(2)(A), and (g)(2)(E), inserted "or per acre" and "or one (1) acre" in (g)(1)(D), inserted "or per acre" in two places in (g)(2)(A), and made a minor stylistic change.

14-284-216. Assessments — Time for payment — Failure to pay.

(a)(1) All annual assessments extended and levied under the terms of this subchapter shall be payable at the time ad valorem taxes are payable.

(2) If any annual assessments levied by the board of commissioners under this subchapter are not paid when due, the collector shall not embrace the assessments in the taxes for which the collector shall sell the lands.

(3) The collector shall report delinquent assessments annually to the board of commissioners for informational purposes.

(4) The collector shall add to the amount of the delinquent assessment a penalty of ten percent (10%) and shall collect the delinquent assessment in the same manner as delinquent ad valorem taxes for a period of no less than eighteen (18) months subsequent to October 10 of the year the fee became delinquent.

(b) The board of commissioners shall enforce the collection by proceedings in the circuit court of the county in the manner provided by §§ 14-121-426 — 14-121-432.

(c)(1) The collector may retain in reserve up to ten percent (10%) of monthly remittances to a fire protection district for a period of no more than sixty (60) days.

(2) The reserve shall be refunded at the end of the sixty (60) days without interest, and the reserve fund may accompany a dues remittance payment.

History. Acts 1979, No. 35, § 14; A.S.A. 1947, § 20-936; 1995, No. 766, § 5; 2011, No. 264, § 1.

Amendments. The 2011 amendment subdivided (a) into (a)(1) and (2); added (a)(3) and (4); in (a)(2), substituted "of commissioners under" for "pursuant to" and deleted "but the collector shall report the delinquencies to the board of commissioners, who shall add to the amount of the annual assessment a penalty of ten percent (10%)" at the end; in (b), deleted "chancery" following "collection by" and substituted "circuit" for "chancery"; and added (c).

14-284-224. Petition to annex territory to an existing district — Special election.

(a)(1)(A) When petitions are filed with the board of commissioners of a fire protection district created pursuant to this subchapter containing the signatures of at least ten percent (10%) of qualified electors of a portion of the unincorporated area of the county, as determined by the number of votes cast by the qualified electors of that portion of the county for all candidates for Governor at the last preceding general election, requesting the annexation of the territory to an existing fire protection district created under this subchapter and requesting that assessed benefits be made on the property located within the area to be annexed to help finance the operation of the district, the board of commissioners shall conduct a public hearing on the petition.

(B) If the board determines the annexation to be desirable, the board shall notify the quorum court, and the quorum court may at its discretion call a special election within the area of the existing fire protection district and the area proposed to be annexed to determine whether the annexation should occur.

(2) No annexation shall occur except pursuant to an election under subsection (b) of this section or by ordinance under subsection (d) of this section.

(b)(1) The special election called by the quorum court to submit the question of the annexation and financing of the fire protection district to the electors of the district and the area to be annexed shall be held no later than ninety (90) days after the proclamation of a special election in accordance with § 7-11-201 et seq.

(2) At the election, the question of annexing the area to the district and the financing of the district shall be placed on the ballot in substantially the following form:

"FOR the annexation of .....(description of area to be annexed), and the levy of assessed benefits on real property within the area to be annexed to help finance the district .....☐

AGAINST the annexation of .....(description of area to be annexed), and the levy of assessed benefits on real property within the area to be annexed to help finance the district .....☐"

(c) If a majority of those voting at the election who reside within the area to be annexed and a majority of those voting at the election who reside within the existing district vote in favor of the annexation, the area shall be deemed annexed and shall become a part of the fire protection district and governed accordingly.

(d)(1) As an alternative to an election on the annexation issue, if the board of commissioners of a fire protection district is in favor of the annexation, the board may refer the petitions to the county quorum court that may then accomplish the annexation by enactment of a county ordinance providing for the annexation.

(2)(A)(i) However, the ordinance shall not go into effect until sixty (60) days after its enactment.

(ii) During that time, if petitions calling for a referendum on the ordinance are presented to the quorum court and the petitions are signed by the number prescribed in subsection (a) of this section, the quorum court shall call a special election in accordance with § 7-11-201 et seq. on the issue of the annexation.

(B) The election shall be conducted as prescribed in subsection (b) of this section.

(C) Unless at least a majority of those voting at the election who reside within the area to be annexed and a majority of those voting at the election who reside within the existing district vote in favor of the annexation, the annexation shall not occur.

(3) If the petitions are filed within sixty (60) days after enacting the ordinance, the ordinance shall not go into effect until and unless the annexation is approved at the election provided for in this section.

(e) An attempt at annexation under this section, whether successful or not, shall in no way reduce the bonding authority of the fire protection district, nor shall the failure of the attempt at annexation have any effect on the existing fire protection district.

(f) No area shall be annexed under this section if it is located within the service area of another fire protection district or a nonprofit fire protection corporation.

History. Acts 1991, No. 1028, § 2; 2005, No. 2145, § 55; 2007, No. 1049, § 77; 2009, No. 1480, § 95.

Amendments. The 2007 amendment rewrote (b)(1); and inserted "in accordance with § 7-5-103(b)" in (d)(2)(A)(ii).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b)(1) and (d)(2)(A)(ii).

Subchapter 3 — Rural Fire Protection Service

SECTION.

14-284-304. Powers and duties.

The Rural Fire Protection Service of the Arkansas Forestry Commission shall have the following powers, functions, and duties to be performed under appropriate policies, rules, and regulations promulgated by the Arkansas Forestry Commission:

(1) To develop rural fire protection plans for the providing of fire protection services in the various rural areas of this state which do not have available the benefits or services of an organized or voluntary fire fighting program, and to assist existing organized or volunteer fire fighting services;

(2) To encourage the establishment of rural fire protection districts and to promulgate reasonable and necessary rules and regulations that rural communities must meet in order to become eligible to secure fire fighting vehicles and equipment through the Arkansas Forestry Commission;

(3) To cooperate with and assist the Arkansas Fire Training Academy in developing training programs designed to instruct and train fire fighters employed or used by rural fire protection districts in the suppression of fires, and to especially establish training programs designed to prepare rural fire fighters in the methods of handling fire fighting problems encountered in rural areas;

(4) To provide leadership and to cooperate with the Arkansas Department of Emergency Management, the State Fire Marshal's office, and the Arkansas Fire Training Academy in coordinating the efforts of these agencies with the efforts and services of rural fire protection districts for the purpose of coordinating and making maximum use of the services and resources of this state in providing rural fire protection services in this state;

(5) To establish a program to obtain by acquisition, donation, transfer, loan, or purchase, vehicles and other properties which are suitable for repair, refurbishing, and renovation, to be used as fire trucks or other fire fighting equipment, and to acquire the necessary tanks, pumps, water hoses, and other equipment to convert and adapt the equipment for fire fighting purposes, and to make the equipment available to rural fire protection districts, under appropriate rules and regulations and eligibility standards promulgated by the Arkansas Forestry Commission, to be used by rural fire protection districts in the suppression of fires;

(6) To provide technical assistance and guidance to rural fire protection districts, to cooperate with and assist persons interested in the creation of the districts in the collection of data and providing other resources or technical assistance to aid rural property owners in efforts to establish rural fire protection services, and to provide technical

advice and assistance to rural fire protection districts to enable the districts to obtain and operate the necessary equipment and training and operating procedures to function efficiently as a rural fire protection district;

(7) To contract with the Department of Correction for providing mechanical, painting, body work, or other repair services relative to the conversion, painting, and adaptation of vehicles being converted into fire protection vehicles, and to reimburse the Department of Correction for the cost of the services;

(8) To promulgate appropriate rules, regulations, and forms for the administration of the Rural Fire Protection Revolving Fund, which shall consist of moneys made available for it to be used by the Arkansas Forestry Commission in defraying the initial cost of equipment, repair, furnishing, and adaptation of vehicles as fire trucks, or other fire fighting equipment, with the cost to be reimbursed to the Arkansas Forestry Commission upon the vehicle being made available to a rural fire protection district or similar rural fire fighting agency which operates not for profit, and, in addition, to make loans, as provided in this subchapter, to rural fire protection districts to provide a portion of the moneys required to enable the districts to acquire vehicles and equipment from the Arkansas Forestry Commission; and

(9) To perform such other functions and duties which may be necessary to enable the Arkansas Forestry Commission to provide a program of comprehensive services to encourage the development and availability of rural fire protection services throughout this state.

History. Acts 1979, No. 36, § 2; A.S.A. 1947, § 20-945; Acts 1993, No. 1095, § 1; 1999, No. 646, § 55.

Publisher's Notes. Acts 1999, No. 646, § 1, provided: "The State Office of Emergency Services shall hereafter be known as the 'Arkansas Department of Emergency Management'. Any provisions of the Arkansas Code not corrected by this act shall be corrected by the Arkansas Code Revision Commission to reflect the title 'Arkansas Department of Emergency Management' instead of 'State Office of Emergency Services' or any similar titles that now apply to the State Office of Emergency Services."

Subchapter 4 — Insurance Premium Taxes

14-284-403. Apportionment of funds.

(a)(1) These premium tax moneys are assessed for disbursement from the Fire Protection Premium Tax Fund, § 19-6-468, by the Department of Finance and Administration to the counties in the following percentages:

Arkansas County — 0.78%, Ashley County — 1.39%, Baxter County — 1.78%, Benton County — 3.86%, Boone County — 1.46%, Bradley County — 0.52%, Calhoun County — 0.51%, Carroll County — 0.97%, Chicot County — 0.51%, Clark County — 1.13%, Clay County — 1.10%, Cleburne County — 1.11%, Cleveland County — 0.66%, Columbia County — 1.24%, Conway County — 1.04%, Craighead County — 2.91%, Crawford County — 1.98%, Crittenden County — 1.32%, Cross County — 0.84%, Dallas County — 0.45%, Desha County — 0.71%, Drew County — 0.80%, Faulkner County — 2.30%, Franklin County — 0.97%, Fulton County — 0.84%, Garland County — 3.12%, Grant County — 1.13%, Greene County — 1.39%, Hempstead County — 1.89%, Hot Spring County — 1.46%, Howard County — 0.75%, Independence County — 1.90%, Izard County — 0.91%, Jackson County — 0.95%, Jefferson County — 2.32%, Johnson County — 1.05%, Lafayette County — 0.71%, Lawrence County — 0.96%, Lee County — 0.73%, Lincoln County — 1.12%, Little River County — 0.77%, Logan County — 1.06%, Lonoke County — 1.70%, Madison County — 0.95%, Marion County — 1.00%, Miller County — 1.44%, Mississippi County — 1.77%, Monroe County — 0.53%, Montgomery County — 0.66%, Nevada County — 0.58%, Newton County — 0.67%, Ouachita County — 1.37%, Perry County — 0.62%, Phillips County — 1.12%, Pike County — 0.87%, Poinsett County — 1.14%, Polk County — 1.01%, Pope County — 1.73%, Prairie County — 0.83%, Pulaski County — 5.99%, Randolph County — 0.96%, St. Francis County — 1.45%, Saline County — 3.00%, Scott County — 0.59%, Searcy County — 0.73%, Sebastian County — 2.06%, Sevier County — 0.82%, Sharp County — 1.30%, Stone County — 0.77%, Union County — 2.01%, Van Buren County — 1.18%, Washington County — 3.46%, White County — 2.71%, Woodruff County — 0.47%, Yell County — 1.11%.

(2)(A) The moneys shall be apportioned by each quorum court to the districts and municipalities within the county based upon population unless the county intergovernmental cooperation council notifies the quorum court of the fire protection needs of the districts and municipalities, in which case the moneys shall be apportioned by the quorum court based on those needs.

(B) The funds shall be distributed to municipalities and those certified departments in districts that are in compliance with this subchapter, § 20-22-801 et seq., and § 6-21-106.

(C) Fire departments that are not certified by the Office of Fire Protection Services under § 20-22-801 et seq. shall also be eligible to receive moneys disbursed under this section so long as all moneys received are spent directly on equipment, training, capital improvements, or other expenditures necessary for upgrading the service provided by the department.

(D)(i) An inactive fire department, as determined by the county judge, is not eligible to receive moneys disbursed under this section.

(ii) Any moneys allocated by the county intergovernmental cooperation council and any moneys that would have been apportioned to

an inactive fire department based upon population shall be disbursed by the quorum court to the active departments based upon fire protection needs.

(iii) If a quorum court has passed a resolution that reallocates the moneys remaining after the disbursement of moneys under this section, then the moneys shall be reallocated based upon the quorum court resolution.

(b) Disbursements shall be made on forms prescribed by the Department of Finance and Administration.

(c) A county treasurer shall not collect the treasurer's commission provided in § 21-6-302 on any of the premium tax moneys disbursed from the Fire Protection Premium Tax Fund.

History. Acts 1991, No. 833, § 3; 1992 (1st Ex. Sess.), No. 10, § 4; 2005, No. 435, § 1; 2007, No. 538, § 2; 2011, No. 880, § 1.

A.C.R.C. Notes. Acts 2007, No. 1343, § 2, provided: "FIRE DEPARTMENT GRANT ALLOCATION AND UTILIZATION. The Department of Finance and Administration shall distribute the fire department grants appropriation and funds authorized by this act, or so much thereof as is available, to each county based on the percentages as prescribed in Arkansas Code 14-284-403. The fire department grants authorized by this act may be used by the fire departments for maintenance and general operations, fire fighting training expenses, purchase of fire fighting equipment, and other expenses necessary to provide fire fighting protection."

Acts 2011, No. 1103, § 83, provided: FUNDING — GRANTS TO FIRE DEPARTMENTS. "After funds collected pursuant to §26-57-614 are distributed in accordance with §14-284-403, any remaining balance of authorized funding for grants to fire departments for Crittenden County during the 2010-2011 fiscal year in the amount of one hundred fifty-three thousand eight hundred and ninety-four dollars ($153,894) or above, shall be distributed as follows:

"(a) sixteen percent (16%) shall be distributed to the Edmonson Fire Department up to a maximum of twenty-four thousand five hundred thirty two dollars ($24,532), and

"(b) thirty-two percent (32%) shall be distributed to the Earle Fire Department up to a maximum of forty-nine thousand seventy dollars ($49,070), and

"(c) fifty-two percent (52%) shall be distributed to the Marion Fire Department up to a maximum of eighty thousand two hundred ninety-two dollars ($80,292).

"Any balances remaining for Crittenden County following the distribution in subsections (a) through (c) of this section, shall be distributed to active fire departments based on population."

Amendments. The 2007 amendment added the subdivision designations in (a)(2); and added "and § 6-21-106" in (a)(2)(B).

The 2011 amendment inserted (a)(2)(D).

14-284-406. Areas with no rural volunteer fire department or fire protection district — Areas in two or more counties.

(a)(1) Pursuant to § 14-284-201(a)(2), in any area in any county in which there is no rural volunteer fire department or fire protection district which qualifies for funds under the provisions of this subchapter, the quorum court is authorized, in its discretion and with the approval of the Arkansas Fire Protection Services Board, to designate any unincorporated area of the county to be served by a municipal fire

department, if approved by the governing authorities of the municipality.

(2)(A) In addition to funds the municipality is otherwise entitled to under this subchapter, the municipality serving any such designated area shall receive the funds which the rural volunteer fire department or fire protection district would have been eligible to receive.

(B) The funds shall be used by the municipality to provide training and to purchase equipment necessary to provide fire protection in the designated unincorporated area in compliance with this subchapter.

(b)(1) No municipality shall receive funds under this subchapter unless it is willing to provide fire protection through mutual aid agreements in areas within five (5) miles of its corporate limits.

(2) A municipality shall not be required to respond when, in the opinion of proper municipal authorities, its municipal property or fire classification rating would be jeopardized.

(c)(1) A rural volunteer fire department or fire protection district that qualifies for funds under this subchapter and that provides fire protection services in two (2) or more counties shall be eligible to receive moneys from each of the counties under § 14-284-403(a)(2).

(2) The county quorum court of each county shall apportion the funds to the fire departments or districts eligible under this subsection in accordance with § 14-284-403(a)(2).

History. Acts 1991, No. 833, § 3; 2003, No. 200, § 1.

14-284-409. Maintenance of real property of rural volunteer fire department.

The county judge of any county is hereby authorized and empowered, in his or her discretion, to grade, gravel, pave, and maintain real property of a rural volunteer fire department, including roads or driveways, as necessary for the effective and safe operation of the rural volunteer fire department.

History. Acts 1991, No. 833, § 7; 2003, No. 102, § 1.

CHAPTER 285

MUNICIPAL RECREATION IMPROVEMENT DISTRICTS

SECTION.

14-285-103. Collection of annual installments.

(a) The county collector of each county wherein is located all or part of a municipal recreation improvement district formed in a second class city shall collect the annual installments of the assessment of benefits

by the district and the amount shall be collected along with and at the same time as ad valorem real property taxes.

(b) The county collector shall not accept payment of ad valorem real property taxes unless accompanied by payment of annual installments of the assessments by the municipal recreation improvement districts.

(c) All municipal recreation improvement districts shall report their assessments of benefits to the county collectors at such time and in such manner as required by the county collectors.

(d) A municipal recreation improvement district may enforce collection of a delinquent assessment by a proceeding in the circuit court of the county in the manner as provided for municipal property owners' improvement districts under § 14-94-122.

History. Acts 1985, No. 179, § 3; A.S.A. 1947, § 20-152; Acts 2007, No. 152, § 1.

Amendments. The 2007 amendment rewrote (d).

CHAPTER 286

FIRE ANT ABATEMENT DISTRICTS

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-286-103. Elections — Time — Ballots.

(a) The special election called by the county court to submit the question of the establishment and financing of a red imported fire ant abatement district to the electors of the proposed district shall be held in accordance with § 7-11-201 et seq. no later than ninety (90) days after the proclamation of the election.

(b) At the election, the question of establishing and financing the district shall be placed on the ballot in substantially the following form:

"FOR the establishment of a Red Imported Fire Ant (Solenopsis invicta) abatement district in ____ County, ____ (city), ____ (designated area) and the establishment of assessed benefits on real property in the

district in an amount not to exceed one percent (1%) of the assessed valuation of real property in the district to finance the district ____.

AGAINST the establishment of a Red Imported Fire Ant (Solenopsis invicta) abatement district in ____ County, ____ (city), ____ (designated area) and the establishment of assessed benefits on real property in the district in an amount not to exceed one percent (1%) of the assessed valuation of real property in the district to finance the district ____."

History. Acts 1997, No. 590, § 3; 2005, No. 2145, § 56; 2007, No. 1049, § 78; 2009, No. 1480, § 96.

Amendments. The 2007 amendment rewrote (a).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

CHAPTER 287

MUNICIPAL MANAGEMENT DISTRICTS

Cross References. Fire Ant Advisory Board, § 2-16-701 et seq.

14-287-101. Authority to create.

Cities may enact by ordinance a process to create a municipal management district to manage, develop, construct, and maintain public works and enhancement projects in areas of municipalities.

History. Acts 1999, No. 230, § 1.

14-287-102. Petition to create.

Before a municipal management district can be created, a petition must be submitted to the governing body of the municipality that includes the following:

(1) A resolution to the governing body in support of the creation of the district and signed by at least ninety percent (90%) of the property owners within the district representing at least ninety percent (90%) of the appraised property value within the district and at least ninety percent (90%) of the privately held land area within the district;

(2) The boundaries of the proposed district;

(3) The specific purposes for which the district will be created;

(4) The general nature of the work, projects, or services proposed to be provided;

(5) The method of establishing assessments for the district;

(6) A project cost estimate which shall not exceed two million dollars ($2,000,000); and

(7) A budget for operating and paying for improvements.

History. Acts 1999, No. 230, § 2.

14-287-103. Maximum size of district.

The municipal management district will be limited to a maximum of one (1) square mile.

History. Acts 1999, No. 230, § 3.

14-287-104. Municipal management district commission.

(a) The mayor will appoint two (2) members of the governing authority and three (3) residents or owners of property in the district to serve on the municipal management district commission.

(b) Terms of the commissioners will be decided by local ordinance, not to exceed five (5) years.

(c) No commission member shall receive compensation.

(d) The commission may retain legal counsel and staff assistance may be provided by the municipality.

(e) Upon termination of the district, the municipality shall accept maintenance responsibility for the improvements.

(f) The life of the district shall not exceed ten (10) years, at which time all improvements, debts, and charges will be paid in full.

History. Acts 1999, No. 230, § 4.

14-287-105. Rates and other fees — Annual audit.

(a) Municipal management districts may establish and maintain reasonable and nondiscriminatory rates, fares, tolls, charges, assessments, rents, or other fees or compensation for the use of the improvements constructed, operated, or maintained by the district.

(b) The district shall be audited by a certified public accountant each year with the audit findings being published in a daily newspaper with a circulation which includes the district.

History. Acts 1999, No. 230, § 5.